

**CUSTODIAL AND PAYING AGENCY AGREEMENT**  
**BY AND BETWEEN**  
**FRANKLIN VENTURE, LLC,**  
**FEDERAL DEPOSIT INSURANCE CORPORATION, AS SECURED PARTY,**  
**AND**  
**CITIBANK, N.A., AS CUSTODIAN AND PAYING AGENT**

Dated as of September 30, 2009

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## Exhibits

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## CUSTODIAL AND PAYING AGENCY AGREEMENT

THIS CUSTODIAL AND PAYING AGENCY AGREEMENT (as the same shall be amended, modified or supplemented in accordance with the terms hereof, this "**Agreement**") is made and entered into as of September 30, 2009, by and between Franklin Venture, LLC, a Delaware limited liability company (the "**Company**"), the Federal Deposit Insurance Corporation, in its corporate capacity as the Secured Party under the Reimbursement and Security Agreement (as defined herein), and its successors and assigns (the "**Secured Party**"), and Citibank, N.A., a national banking association, (the "**Bank**").

### RECITALS

WHEREAS, on November 7, 2008, the FDIC (hereinafter defined) was appointed receiver for Franklin Bank, S.S.B. (the "**Failed Bank**"); and

WHEREAS, the Failed Bank previously owned the Loans as described on the Loan Schedule attached hereto as **Exhibit A** (the "**Loan Schedule**"); and

WHEREAS, the FDIC as receiver for the Failed Bank (the "**Receiver**") and the Company have entered into a Loan Contribution and Sale Agreement (the "**Contribution Agreement**") dated as of the date hereof, pursuant to which the Receiver, in its capacity as the Initial Member (as defined below), transferred all of its right, title, and interest in and to the Loans to the Company; and

WHEREAS, the Receiver, including its successors and assigns (the "**Initial Member**"), the Company, and RCS Franklin Venture LLC, a Delaware limited liability company, have entered into the Amended and Restated Limited Liability Company Operating Agreement (the "**LLC Operating Agreement**") dated as of the date hereof; and

WHEREAS, pursuant to the Reimbursement and Security Agreement (the "**Reimbursement and Security Agreement**") dated as of the date hereof, by and between the Company and Secured Party, the Company has pledged the Loans to the Secured Party and the Reimbursement and Security Agreement requires that the Company retain a document custodian, meeting the requirements set forth in the Reimbursement and Security Agreement, to take possession of the Custodial Documents (as defined below), in accordance with the terms and conditions hereof; and

WHEREAS, the Company wishes to open and maintain in its name at a branch of the Bank certain accounts into which amounts will be deposited and proceeds will be distributed as provided herein and to appoint the Bank as Custodian and Paying Agent (each as defined below) to perform the services contemplated by this Agreement; and

WHEREAS, the Bank wishes to accept its appointment as Custodian and as Paying Agent to perform the services contemplated by this Agreement; and

WHEREAS, the Company and the Bank wish to enter into this Agreement to, among others, govern the allocation of the proceeds to be distributed from each account established pursuant to this Agreement and the performance of certain tasks by the Bank;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## ARTICLE I DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below.

**"60 Days Delinquent"** shall mean, with respect to any Loan, that either (i) the Borrower is 60 or more days delinquent in payment, determined in accordance with the MBA Delinquency Calculation Method, under the terms of such Loan or (ii) the principal balance, interest rate or other payment terms of such Loan were materially modified at a time when the Borrower was 60 or more days delinquent in payment (determined in accordance with the MBA Delinquency Calculation Method) and, since the effective date of such modification, the Borrower has not yet made three consecutive monthly payments under the modified Loan terms on a timely basis. A monthly payment will be considered timely for this purpose if it is made on or prior to the day immediately preceding the Loan's next due date.

**"Acceptable Rating"** shall mean any of the top three rating categories that may be assigned to any security, obligation or entity by the Rating Agencies.

**"Account Control Agreement"** shall mean one or more Account Control Agreements dated as of the date hereof, among the Company, the Bank and the Purchase Money Note Guarantor, as the same shall be amended, supplemented or otherwise modified from time to time.

**"Accounts"** shall have the meaning given in Section 4.1(b).

**"Acquired Collateral"** shall mean Collateral to which title is acquired by or on behalf of the Company or any Ownership Entity by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, in any such case in accordance with the Loan Documents and the LLC Operating Agreement.

**"Affiliate"** shall mean, with respect to any specified Person, (i) any other Person directly or indirectly Controlling or Controlled by or under common Control with such specified Person, (ii) any Person owning or Controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, general partner, managing member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, general partner, managing member, trustee, employee or promoter, (iv) any corporation, partnership, limited liability company or trust for which any Person referred to in clause (ii) or (iii) acts in that capacity, or (v) any Person who is an officer, director, general partner, managing member, trustee or holder of ten percent (10%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); provided, however, that for the purposes of this Agreement neither the Initial Member nor the Secured Party shall be deemed an Affiliate of the Company.

**"Agreement"** shall have the meaning given in the preamble.

**"Ancillary Documents"** shall mean the LLC Operating Agreement, the Servicing Agreement (including the Electronic Tracking Agreement attached as an exhibit thereto), one or more Account Control Agreements, the Contribution Agreement, the LLC Interest Sale Agreement (and the Guaranty required to be delivered thereby), the Purchase Money Note and the Reimbursement and Security Agreement, in each case once executed and delivered, and any and all other agreements and instruments executed and delivered in connection with the Closing.

**"Applicable Ownership Entity"** shall mean the Company or any subsidiary thereof formed from time to time for the purposes of holding REO Property.

**"Authorized Denominations"** shall have the meaning given in Section 2.5(b).

**"Authorized Representative"** shall mean, with respect to any Person, each individual designated, in writing as required by Section 17.1, by such Person to the Custodian to act as an authorized representative of such Person for purposes of this Agreement.

**"Borrower"** shall mean any borrower or other obligor with respect to any Loan.

**"Business Day"** shall mean any day except (i) a Saturday, Sunday or other day on which commercial banks in Washington, D.C. or United States federal government offices are required or authorized by Law to close, or (ii) with respect to any day on which the Company owes an obligation to the Custodian or the Paying Agent or on which the Custodian or the Paying Agent owes an obligation to the Company, any day on which the Bank's offices are closed.

**"Closing"** shall mean the consummation of the transactions contemplated in the LLC Interest Sale Agreement.

**"Closing Date"** shall mean September 30, 2009.

**"Code"** shall mean the United States Internal Revenue Code of 1986, as amended.

**"Collateral"** shall mean any and all real or personal property, whether tangible or intangible, securing or pledged to secure a Loan, including any account, equipment, guarantee or contract right, or other interest that is the subject of any Collateral Document and, as the context requires, includes Acquired Collateral, whether or not so expressly specified.

**"Collateral Certificate"** shall have the meaning given in Section 6.1(b).

**"Collateral Document"** shall mean any pledge agreement, security agreement, personal or corporate guaranty, deed of trust, deed, mortgage, contract for the sale of real property, assignment, collateral agreement or other agreement or document of any kind, whether an original or a copy, whether similar to or different from those enumerated, (i) securing in any manner the performance or payment by any Borrower of its obligations or the obligations of any other Borrower under any of the Loans or the Notes evidencing the Loans or (ii) evidencing any Acquired Collateral.

**“Collection Account”** shall mean a segregated trust or custodial account established and maintained at a branch of the Bank for the purpose of funding any payments that are permitted under the Priority of Payments and holding and distributing Loan Proceeds to the Distribution Account.

**“Company”** shall have the meaning given in the preamble.

**“Contribution Agreement”** shall have the meaning given in the recitals.

**“Control”** (including the phrases **“Controlled by”** and **“under common Control with”**) when used with respect to any specified Person shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

**“Custodial Delivery Failure”** shall have the meaning given in Section 13.1(b).

**“Custodial Documents”** shall mean the documents listed in Section 6.1(c).

**“Custodial Report”** shall mean a report prepared by the Custodian, which shall be in a form acceptable to the Company detailing, with respect to any Loan that has been released by the Custodian, the following: (i) the borrower name and any identification number assigned to the Loan, (ii) the location to which the Custodial Documents with respect to such Loan were delivered by the Custodian, and (iii) the date on which such Custodial Documents were released by the Custodian.

**“Custodian”** shall mean the Bank, and any successor custodian that satisfies the requirements set forth in Section 10.1(d) of this Agreement.

**“Custodian and Paying Agent Report”** shall have the meaning given in Section 11.1(a).

**“Cut-Off Date”** shall have the meaning given in the Contribution Agreement.

**“Debt Agreements”** shall have the meaning given in Section 2.2.

**“Delinquency Test”** shall be satisfied for any Distribution Date if the aggregate Unpaid Principal Balance of Loans that are 60 Days Delinquent as of the immediately preceding Determination Date does not exceed 60% of the aggregate Unpaid Principal Balance of all Loans as of such Determination Date.

**“Determination Date”** shall mean the last day of each Due Period.

**“Distribution Account”** shall mean a segregated trust or custodial account established and maintained at a branch of the Bank for the sole purpose of holding and distributing Loan Proceeds.

**“Distribution Date”** shall mean (i) with respect to the initial Due Period, November 5, 2009, (ii) with respect to any subsequent Due Period prior to and including the Due Period in which the last Servicing Transfer Date occurs, the fifth (5<sup>th</sup>) day of the second month after such



Due Period, or if such day is not a Business Day, the next succeeding day that is a Business Day, and (iii) with respect to each subsequent Due Period thereafter, the twenty-fifth (25<sup>th</sup>) day of the month immediately following such Due Period, or if such day is not a Business Day, the next succeeding day that is a Business Day. For the avoidance of doubt, there shall be two (2) Distribution Dates in the second month after the month in which the last Servicing Transfer Date occurs.

**"Distribution Date Report"** shall have the meaning given in Section 11.3.

**"Due Period"** shall mean (i) the period from the Cut-Off Date to and including September 30, 2009, and (ii) each subsequent calendar month.

**"Electronic Agent"** shall have the meaning given in the Electronic Tracking Agreement.

**"Electronic Tracking Agreement"** shall mean the Electronic Tracking Agreement, dated as of September 30, 2009, among Secured Party, the Managing Member, the Servicer, the Electronic Agent and MERS®, as the same shall be amended, supplemented or otherwise modified from time to time.

**"ERISA"** shall mean the United States Employee Retirement Income Security Act of 1974, as amended.

**"Escrow Account"** shall have the meaning given in the Contribution Agreement.

**"Escrow Advance"** shall mean any advance made to pay taxes or insurance premiums or any other cost or expense that, but for a shortfall in the Borrower's Escrow Account, is payable using funds in the Borrower's Escrow Account.

**"Exception"** shall mean, with respect to any Loan or REO Property, any variance from the requirements of Section 6.1(c), including any missing Custodial Document and any document that does not meet the applicable requirements set forth in Section 6.1(c).

**"Excluded Expenses"** shall have the meaning given in the LLC Operating Agreement.

**"Existing Servicer"** shall have the meaning given in the Contribution Agreement.

**"Failed Bank"** shall have the meaning given in the recitals.

**"FDIC"** shall mean the Federal Deposit Insurance Corporation in any capacity.

**"Final Disposition"** shall mean with respect to any asset, any sale, assignment (excluding pledges or other assignments for collateral purposes), conveyance, transfer or other disposition thereof. The terms **"Finally Dispose"** and **"Finally Disposed of"** shall have correlative meanings.

**"Final Distribution"** shall mean the distribution of all remaining Loan Proceeds in accordance with the terms of this Agreement after liquidation of all of the Loans and related Collateral.

**“Foreclosure Loss”** shall mean any loss realized when the Company completes the foreclosure on a Loan and realizes final recovery on any Collateral securing such Loan through liquidation and recovery of all insurance proceeds.

**“Governmental Authority”** shall mean any United States or non-United States national, federal, state, local, municipal or provincial or international government or any political subdivision of any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body.

**“Guarantor”** shall mean any guarantor of all or any portion of any Loan or all or any of any Borrower’s obligations set forth and described in the Loan Documents.

**“Holder”** shall mean with respect to any Purchase Money Note, the Person whose name appears on the Purchase Money Note Register as the registered holder of such Purchase Money Note.

**“Immediate Family Member”** shall mean, with respect to any individual, his or her spouse, parents, parents-in-law, grandparents, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children (whether natural or adopted), children-in-law, stepchildren, grandchildren and grandchildren-in-law.

**“Initial Member”** shall have the meaning given in the recitals.

**“Interest Proceeds”** shall mean with respect to any Due Period, all Loan Proceeds that are received during such Due Period other than those items included in Principal Proceeds. For purposes of this definition, in the case of Loan Proceeds omitted from a Monthly Report pursuant to Section 7.4(b) of the LLC Operating Agreement, such Loan Proceeds shall be deemed to be have been received in the Due Period covered by the Monthly Report in which such Loan Proceeds are included.

**“Law”** shall mean any applicable statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order (including any executive order) of any Governmental Authority.

**“Lien”** shall mean any pledge, security interest, charge, restriction on or condition to transfer, voting or exercise or enjoyment of any right or beneficial interest, option, right of first refusal and any other lien, claim or encumbrance of any nature whatsoever.

**“Liquidity Reserve”** shall have the meaning given in Section 3.3.

**“Liquidity Reserve Account”** shall mean a segregated trust or custodial account established and maintained at a branch of the Bank for the sole purpose of holding and distributing the funds in the Liquidity Reserve.

**“Liquidation Proceeds”** shall mean cash proceeds of any foreclosure in respect of a defaulted Loan, revenues received with respect to the conservation and disposition of a foreclosed property or REO Property, and any other amounts received in connection with the liquidation of defaulted Loans, whether through trustee’s sale, foreclosure sale or otherwise.

**"LLC Interest Sale Agreement"** shall have the meaning given in the LLC Operating Agreement.

**"LLC Operating Agreement"** shall have the meaning given in the recitals.

**"Loan"** shall mean any loan or Loan Participation listed on the Loan Schedule and any loan into which any listed loan or Loan Participation is refinanced, and includes with respect to each such loan or Loan Participation: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Company in or under the Collateral Documents; (iii) any contract for deed or installment land contract and the real property which is subject to any such contract for deed or installment land contract; (iv) any lease and the related leased property; and (v) all rights to causes of action, lawsuits, judgments, claims and demands of any nature available to or being pursued by or for the benefit of the Initial Member with respect to the Loans, the Collateral or the ownership, use, function, value of or other rights pertaining thereto, whether arising by way of counterclaim or otherwise, other than any claims retained by the Initial Member pursuant to the Contribution Agreement; and (vi) all guaranties, warranties, indemnities and similar rights in favor of the Initial Member with respect to any of the Loans.

**"Loan Documents"** shall mean all documents, agreements, certificates, instruments and other writings (including all Collateral Documents) now or hereafter executed by or delivered or caused to be delivered by any Borrower, any Guarantor or any other obligor evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of a Loan or any Acquired Collateral or evidencing any transaction contemplated thereby, and all Modifications thereto.

**"Loan Modification Program"** shall have the meaning assigned to such term in the Servicing Agreement.

**"Loan Participation"** shall mean any asset subject to a shared credit, participation or similar inter-creditor agreement under which the Failed Bank or the Receiver was the lead or agent financial depository institution or otherwise managed or held the credit or sold participations, or under which the Failed Bank or the Receiver was a participating financial depository institution or purchased participations in a credit managed by another Person.

**"Loan Participation Agreement"** shall mean an agreement under which the Failed Bank or the Receiver was the lead or agent financial depository institution or otherwise managed or held a shared credit or sold participations, or under which the Failed Bank or the Receiver was a participating financial depository institution or purchased participations in a credit managed by another Person.

**"Loan Proceeds"** shall mean (i) any and all proceeds (net of such proceeds as are payable to others under any Loan Participation Agreement) with respect to any or all of the Loans and any or all of the Collateral that is received at any time after the Cut-Off Date, including principal, interest, default interest, prepayment fees, premiums and charges, extension and exit fees, late fees, assumption fees, other fees and charges, insurance proceeds and condemnation payments (or any portion thereof) that are not used and disbursed to repair, replace or restore the related Collateral in accordance with the terms of the Loan Documents; (ii)

any and all proceeds from sales or other dispositions of any or all of the Loans or the Collateral; (iii) any proceeds from making a draw under any letter of credit or certificate of deposit held with respect to any Loan, provided that such draw is permitted by the terms of the Loan Documents; (iv) any recoveries from Borrowers or Guarantors of any kind or nature with respect to the Loans; (v) any investor incentive fees received by the Company under any Loan Modification Program (but not any incentive fees payable to servicers under any Loan Modification Program), and (vi) any interest or other earnings accrued and paid on any of the amounts described in the foregoing clauses (i) through (v) while held in the Collection Account or any other account.

**“Loan Schedule”** shall have the meaning given in the recitals.

**“Loan Schedule and Exception List”** shall mean a list of the Loans and REO Property, identifying, with respect to each Loan or each REO Property, each Exception, and that details, with respect to any Loan that has been released by the Custodian (i) the borrower name and any identification number assigned to the Loan, (ii) the location to which the Custodial Documents with respect to such Loan were delivered by the Custodian; and (iii) the date on which such Custodial Documents were released by the Custodian.

**“Loss”** shall mean, in respect of any Loan, the amount equal to (as applicable and without duplication): (a) with respect to any Loan Finally Disposed of by the Company, the amount (if any) by which the Unpaid Principal Balance of such Loan, all interest accrued thereon, and all Recovery Expenses related thereto (in each case as of the date of the Final Disposition) exceeds the proceeds from such Final Disposition; (b) with respect to any Loan maturing subsequent to the Cut-Off Date (including as a result of acceleration) as to which collection efforts have ceased, the amount (if any) by which the Unpaid Principal Balance of such Loan, all interest accrued thereon, and all Recovery Expenses related thereto immediately prior to its maturity exceeds the principal payments and fees received by the Company in connection with its maturity; (c) the amount of any Foreclosure Loss in respect of such Loan; or (d) the amount of any Short-Sale Loss in respect of such Loan.

**“Loss Severity”** shall mean, with respect to any Determination Date, the fraction, expressed as a percentage, the numerator of which is the aggregate of Losses incurred during the related Due Period and the denominator of which is the Unpaid Principal Balance (determined in each case immediately prior to liquidation) of the Loans with respect to which such Losses were incurred.

**“Management Fee”** shall mean a fee, payable on each Distribution Date pursuant to Section 5.1, (i) with respect to the initial Distribution Date, equal to the sum of (x) one-twelfth (1/12<sup>th</sup>) of 0.50 percent (0.50%) *multiplied by* the Unpaid Principal Balance of the Loans calculated as of August 1, 2009 *plus* (y) one-twelfth (1/12<sup>th</sup>) of 0.50 percent (0.50%) *multiplied by* the Unpaid Principal Balance of the Loans calculated as of September 1, 2009, and (ii) with respect to each subsequent Distribution Date, equal to one-twelfth (1/12<sup>th</sup>) of 0.50 percent (0.50%) *multiplied by* the Unpaid Principal Balance of the Loans calculated as of the first day of the Due Period with respect to such Distribution Date.

**“Managing Member”** shall have the meaning given in the LLC Operating Agreement.

**“MBA Delinquency Calculation Method”** shall mean the method by which a Loan is considered delinquent in payment if the monthly payment has not been received by the end of the day immediately preceding the Loan’s next due date (generally the last day of the month in which the payment was due), assuming that each month consists of thirty (30) days. For example, a Loan with a due date of July 1, 2010, with no payment received by the close of business on August 31, 2010, would be reported in a September 2010 monthly report of the Company as sixty (60) days delinquent.

**“MERS®”** shall mean Mortgage Electronic Registration Systems, Incorporated, or any successor thereto.

**“MERS Designated Loan”** shall have the meaning given in the Electronic Tracking Agreement.

**“MERS Report”** shall mean the schedule listing the MERS Designated Loans and other information prepared by the Electronic Agent pursuant to the Electronic Tracking Agreement.

**“Modification”** shall mean any extension, renewal, substitution, replacement, supplement, amendment or modification of any agreement, certificate, document, instrument or other writing, whether or not contemplated in the original agreement, document or instrument.

**“Monthly Report”** shall have the meaning given in the LLC Operating Agreement.

**“Mortgage”** shall mean the mortgage, deed of trust or other instrument, including any amendments or modifications thereto, creating a first or junior lien on or ownership interest in a Mortgaged Property.

**“Mortgage Assignment”** shall mean, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the applicable Law of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment and pledge of the Mortgage.

**“Mortgaged Property”** shall mean any underlying real property constituting part of the Collateral for any Loan, whether held in fee simple estate or subject to a ground lease or otherwise, and whether or not improved by buildings or facilities, and any personal property, fixtures, leases and other property or rights pertaining thereto.

**“Note”** shall mean each note or promissory note, lost instrument affidavit, loan agreement, shared credit or Loan Participation Agreement, intercreditor agreement, reimbursement agreement, any other evidence of indebtedness of any kind, or any other agreement, document or instrument evidencing a Loan, and all Modifications to the foregoing.

**“Office”** shall have the meaning given in Section 6.1(a).

**“Ownership Entity”** shall mean a Single Purpose Entity, whether already in existence or formed by the Company for such purpose, which is used to hold REO Property.

**"Paying Agent"** shall mean the Bank, and any successor paying agent that satisfies the requirements set forth in Section 10.1(d) of this Agreement.

**"Performance Tests"** shall mean collectively, the Delinquency Test, the Severity Test and the Principal Reduction Test.

**"Permitted Investments"** shall mean any one or more of the following obligations or securities having at the time of purchase, or at such other time as may be specified, the required ratings, if any, provided for in this definition:

(i) direct obligations of, or guaranteed as to timely payment of principal and interest by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America;

(ii) demand and time deposits in or certificates of deposit of, or bankers' acceptances issued by, any bank or trust company, savings and loan association or savings bank, provided that, in the case of obligations that are not fully FDIC-insured deposits, the commercial paper and/or long-term unsecured debt obligations of such depository institution or trust company (or in the case of the principal depository institution in a holding company system, the commercial paper or long-term unsecured debt obligations of such holding company) have an Acceptable Rating;

(iii) general obligations of or obligations guaranteed by any state of the United States or the District of Columbia receiving ratings of not less than the highest rating of each Rating Agency rating such obligations;

(iv) mutual funds in which investments are limited to the obligations referred to in clauses (1), (2) or (3) of this definition; and

(v) with the prior written consent of the Company or the Secured Party, any other demand, money market or time deposit or other obligation, security or investment.

**"Person"** shall mean any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity.

**"Pre-Approved Charges"** shall have the meaning given in the Contribution Agreement.

**"Principal Proceeds"** shall mean with respect to any Due Period, (i) any and all proceeds received as principal payments on the Loans during such Due Period (excluding Permitted Investments purchased with Interest Proceeds), (ii) any and all proceeds received from sales or dispositions of any Loans during such Due Period, and (iii) all Liquidation Proceeds (including any such proceeds attributed to unpaid interest thereon) received during such Due Period. For purposes of this definition, in the case of Loan Proceeds omitted from a Monthly Report pursuant to Section 7.4(b) of the LLC Operating Agreement, such Loan Proceeds shall be deemed to be

have been received in the Due Period covered by the Monthly Report in which such Loan Proceeds are included.

**“Principal Reduction Test”**: (i) shall be inapplicable for the period from the Closing Date to but not including the date of the first anniversary of the Closing Date; (ii) shall be satisfied for any Distribution Date in each period set forth below if the outstanding principal amount of the Purchase Money Note as of the Determination Date immediately prior to such Distribution Date does not exceed the percentage set forth below opposite such period of the original principal balance of the Purchase Money Note:

<u>Period</u>	<u>Percentage</u>
The date of the first anniversary of the Closing Date to but not including the date of the second anniversary of the Closing Date	90%
the date of the second anniversary of the Closing Date to but not including the date of the third anniversary of the Closing Date	80%
the date of the third anniversary of the Closing Date to but not including the date of the fourth anniversary of the Closing Date	70%
the date of the fourth anniversary of the Closing Date to but not including the date of the fifth anniversary of the Closing Date	60%
the date of the fifth anniversary of the Closing Date to but not including the date of the sixth anniversary of the Closing Date	50%
the date of the sixth anniversary of the Closing Date to but not including the date of the seventh anniversary of the Closing Date	40%
the date of the seventh anniversary of the Closing Date to but not including the date of the eighth anniversary of the Closing Date	30%
the date of the eighth anniversary of the Closing Date to but not including the date of the ninth anniversary of the Closing Date	20%
the date of the ninth anniversary of the Closing Date to but not including the date of the tenth anniversary of the Closing Date	10%

**“Priority of Payments”** shall have the meaning given in Section 5.1.

**“Private Owner”** shall mean RCS Franklin Venture LLC, a Delaware limited liability company.

**“Purchase Money Note”** shall mean that certain Purchase Money Note dated as of September 30, 2009 issued by the Company to the Receiver or any other note executed and delivered upon registration of transfer of, or in exchange for, or in lieu of, the Purchase Money Note.

**“Purchase Money Note Guarantor”** shall mean the FDIC, in its corporate capacity, as the guarantor of the Purchase Money Note.

**“Purchase Money Note Guaranty”** shall mean the Guaranty Agreement by and between the Purchase Money Note Guarantor and the Receiver dated as of the date hereof.

**“Purchase Money Note Guaranty Fee”** shall mean the fee payable to the Purchase Money Note Guarantor pursuant to Section 7.15 of the Reimbursement and Security Agreement.

**“Purchase Money Note Register”** and **“Purchase Money Note Registrar”** shall have the meanings given in Section 2.7(a).

**“Rating Agencies”** shall mean each of Standard and Poor’s Ratings Service, a division of The McGraw-Hill Companies, Inc., Fitch, Inc., or Moody’s Investors Service and such other rating agencies as are nationally recognized.

**“Receiver”** shall have the meaning given in the recitals.

**“Record Date”** shall mean the date on which the holders of the Purchase Money Note(s) entitled to receive a payment in respect of principal, interest or other amounts on the succeeding Distribution Date are determined, such date as to any Distribution Date being the fifteenth day (whether or not a Business Day) prior to the applicable Distribution Date.

**“Recording Office”** shall mean the appropriate recording office of the jurisdiction in which the Mortgaged Property is located with respect to any given Loan or in which the REO Property is located.

**“Recovery Expenses”** shall mean for any period, the amount of actual, reasonable and necessary out-of-pocket expenses paid to third parties (other than Managing Member or any of its Affiliates) by or on behalf of the Company to recover amounts owed with respect to any Loan as to which a Loss was incurred.

**“Reimbursement and Security Agreement”** shall have the meaning given in the recitals.

**“REO Deed”** shall mean, with respect to each REO Property, the instrument or document required by the law of the jurisdiction in which the REO Property is located to convey fee title.



**“REO Property”** shall mean real property to which title is acquired by or on behalf of the Company by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, in any such case, in accordance with the Loan Documents and in connection with the performance by the Company of its obligations and duties under the LLC Operating Agreement.

**“REO Property Files”** shall mean, with respect to each REO Property, to the extent applicable, the following: (A) if the related REO Deed has been delivered for recordation, a copy thereof (which may be electronic) file-stamped with evidence of recording thereon in the name of the Applicable Ownership Entity, together with a certificate of the related servicer or the foreclosure attorney certifying that such REO Deed is a true, correct and complete copy of the original document, or (y) if the related REO Deed has been delivered for recordation but not yet returned, a copy thereof (which may be electronic) together with a certificate of the servicer or the foreclosure attorney certifying that such REO Deed is a true, correct and complete copy of the original document, and that the original REO Deed has been delivered to the proper recording office for recordation; (B) as applicable, either (x) a copy of each REO Deed (which may be electronic) that is intervening between the lender that obtained title to such property assets as a result of foreclosure or deed in lieu of foreclosure of a mortgage or deed of trust and the Applicable Ownership Entity, with the same certification documentation required in clause (A) above, or (y) the original or a copy of the assignment of foreclosure bid between the foreclosing lender and the Applicable Ownership Entity with respect to the related REO Property, and in the case of a copy, together with a certificate of the servicer or the foreclosure attorney certifying that such assignment of foreclosure bid is a true, correct and complete copy of the original document, with the same certification documentation required in clause (A) above; (C) the original or copy policy of title insurance prior to foreclosure of the related mortgage loan accompanied by a title report procured upon foreclosure of the related mortgage loan, with respect to the REO Property; and (D) for any REO Property that is subject to a lease, (x) a copy of the lease together with a certificate of the servicer certifying that such lease is a true, correct and complete copy of the original document, and (y) if required by the Secured Party, the original assignment of such lease from the lessor thereunder to the Applicable Ownership Entity or a copy thereof together with a certificate of the servicer certifying that such assignment is a true, correct and complete copy of the original document.

**“Review Procedures”** shall have the meaning given in Section 6.1(d).

**“Secured Party”** shall have the meaning given in the preamble.

**“Securities Act”** shall have the meaning given in Section 2.7(h).

**“Servicer”** shall mean (i) any Person retained by the Managing Member to service, manage or administer any of the Loans, the Collateral or the REO Property, and (ii) any Person retained by any Person referred to in clause (i) to service, manage or administer any of the Loans, the Collateral or the REO Property.

**“Servicing Agreement”** shall mean the Servicing Agreement dated as of September 30, 2009 by and between the Managing Member and Residential Credit Solutions, Inc., and

thereafter, shall include any substantially similar agreement entered into by the Managing Member and any new or successor Servicer.

**“Servicing Expenses”** shall mean all customary and reasonable out-of-pocket fees, costs, expenses and indemnified amounts incurred in connection with servicing the Loans and the Acquired Collateral, including (i) any and all out-of-pocket fees, costs, expenses and indemnified amounts which a Borrower is obligated to pay to any Person or to reimburse to the lender pursuant to the applicable Note or any other Loan Documents, including Escrow Advances, (ii) any and all reasonable out-of-pocket expenses necessary to protect or preserve the value of the Collateral or the priority of the Liens and security interests created by the Loan Documents relating thereto, including taxes, insurance premiums (including forced place insurance premiums), payment of ground rent, the costs of prevention of waste, repairs and maintenance, foreclosure expenses and legal fees and expenses relating to foreclosure or other litigation with respect to the Loans, (iii) any and all direct expenses related to the preservation, operation, demolition, management and sale of the Acquired Collateral (including real estate brokerage fees), and (iv) to the extent not covered by any of clauses (i) through (iii), legal fees and expenses (including judgments, settlements and reasonable attorneys fees) incurred by the Servicer in its defense of claims asserted against the Company that relate to one or more Loans, and (x) arise out of the acts or omissions of the Failed Bank or the Receiver in connection with the origination or servicing of such Loans prior to the Servicing Transfer Date for such Loans, or (y) allege, as the basis for such claims, any act or omission of the Company (or its Servicer) and such claims are decided (and there are final non appealable orders) in favor of the Company (or its Servicer); provided, however, that Servicing Expenses shall not include Excluded Expenses.

**“Servicing Standard”** shall have the meaning given in the Servicing Agreement.

**“Servicing Transfer Date”** shall have the meaning given in the Contribution Agreement.

**“Severity Test”** shall be satisfied for any Distribution Date if the average Loss Severity (weighted by the unpaid principal balance of the Loans with respect to which Losses were incurred during the applicable Due Period) for the immediately preceding three (3) Determination Dates does not exceed 70%.

**“Short-Sale Loss”** means any loss resulting from the Company’s agreement with a mortgagor to accept a payoff in an amount less than the balance due on any Loan.

**“Single Purpose Entity”** shall mean a corporation or limited liability company that (i) is organized under the laws of any state of the United States or the District of Columbia, (ii) has no material assets other than the Loans and any REO Property, its right, title and interest in, to and under the LLC Operating Agreement and the other instruments contemplated by the LLC Operating Agreement, (iii) is not engaged in any significant business operations except its ownership of the Loans and any REO Property and the conduct of its business pursuant to the LLC Operating Agreement, (iv) does or causes to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, (v) at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (vi) except as expressly contemplated by this Agreement, the LLC Operating Agreement, or by any other Ancillary Documents, does not commingle its assets with assets of

any other Person, (vii) conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (viii) maintains an arm's length relationship with any Affiliate upon terms that are commercially reasonable and on terms no less favorable to it than could be obtained in a comparable arm's length transaction with an unrelated Person, and (ix) has no Debt (as defined in the LLC Operating Agreement).

**"Subservicer"** shall have the meaning given in the Servicing Agreement.

**"Supplemental Delivery Certificate"** shall have the meaning given in Section 6.1(d).

**"Uniform Commercial Code"** shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction, as amended from time to time.

**"Unpaid Principal Balance"** shall mean, at any time, (a) when used in connection with multiple Loans, an amount equal to the aggregate then outstanding principal balance of such Loans, and (b) when used with respect to a single Loan, an amount equal to the then outstanding principal balance of such Loan. For this purpose, in the case of a Loan for which some or all of the related Collateral has been converted to Acquired Collateral, until such time as the Acquired Collateral (or any portion thereof) is liquidated, the unpaid principal balance of such Loan shall be deemed to equal the sum of (i) the unpaid principal balance of such Loan (adjusted pro rata for partial collateral sales, debt forgiveness or retained indebtedness) at the time at which such Loan was converted to Acquired Collateral *plus* (ii) any outstanding balance remaining on such Loan which is evidenced by a modification agreement or a replacement or successor promissory note executed by the Borrower.

**"Working Capital Advances"** shall mean amounts advanced by or on behalf of the Managing Member to fund the Company's operations and operating deficits.

Section 1.2 **Rules of Construction.** This Agreement shall be construed and interpreted in accordance with the following:

(a) References to "Affiliates" include only other Persons which from time to time constitute "Affiliates" of such specified Person, and do not include, at any particular time, other Persons that may have been, but at such time have ceased to be, "Affiliates" of such specified Person, except to the extent that any such reference specifically provides otherwise.

(b) The term "or" is not exclusive.

(c) A reference to a law includes any amendment, modification or replacement to such law.

(d) References to any document, instrument or agreement (a) shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof, and (b) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time.

(e) Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(f) The words “include” and “including” and words of similar import are not limiting, and shall be construed to be followed by the words “without limitation,” whether or not they are in fact followed by such words.

(g) The word “during” when used with respect to a period of time shall be construed to mean commencing at the beginning of such period and continuing until the end of such period.

## **ARTICLE II**

### **PAYING AGENT AND PURCHASE MONEY NOTE**

Section 2.1 Appointment of Paying Agent. Subject to the terms and conditions of this Agreement, the Company hereby appoints the Bank to perform the duties of Paying Agent specifically set forth hereunder, and the Bank hereby accepts such appointment.

Section 2.2 Delivery of Documentation. Executed counterparts of the Purchase Money Note, the Purchase Money Note Guaranty, the Reimbursement and Security Agreement and the Account Control Agreement (the “**Debt Agreements**”) have been delivered to the Paying Agent and the Paying Agent acknowledges receipt thereof. The Company agrees to deliver to the Paying Agent each of the Debt Agreements which is executed and delivered by it, or executed by the Secured Party and delivered to it, subsequent to the date of this Agreement promptly upon such execution and delivery and to deliver each instrument amending or modifying any agreement previously delivered to the Paying Agent.

Section 2.3 Duties. The Paying Agent shall have no duties other than those specifically set forth or provided for in this Agreement and each Debt Agreement to which it is a party and no implied covenants or obligations of the Paying Agent shall be read into this Agreement or any Debt Agreement or any related agreement to which it is a party. The Paying Agent shall have no obligation to inquire whether any request, instruction, certificate, direction, receipt, demand, consent, resolution, statement, instrument, opinion, report, notice, document, communication, statement or calculation is in conformity with the terms of the agreement pursuant to which it is given, except those irregularities or errors manifestly apparent on the face of such document or actually known to the Paying Agent. If, however, any remittance or communication received by the Paying Agent appears manifestly erroneous or irregular, the Paying Agent shall endeavor to make prompt inquiry to the Person originating such remittance or communication in order to determine whether a clerical error or inadvertent mistake has occurred.

Section 2.4 Forms of Purchase Money Note. The Purchase Money Notes will be issued in the form of one or more certificated notes in definitive, fully registered form without interest coupons substantially, which shall be registered in the name of the owner thereof, and duly executed by the Company.

Section 2.5 Authorized Amount; Stated Maturity; Denominations.

(a) The aggregate face amount of Purchase Money Notes that may be executed and delivered under this Agreement is limited to U.S.\$750,000,000 except for Purchase Money Notes executed and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Purchase Money Notes pursuant to Section 2.7 or 2.8 of this Agreement.

(b) The Purchase Money Notes shall be issuable in minimum denominations of U.S.\$500,000 and integral multiples of U.S.\$1,000 in excess thereof (each such denomination, an “**Authorized Denomination**”). Any interest in a Purchase Money Note equal to or in excess of the applicable minimum denomination at the time of the issuance thereof which ceases or fails to be such minimum or multiple as a result of the repayment of principal may be transferred in its entirety.

#### Section 2.6 Execution, Delivery and Dating.

(a) The Purchase Money Notes shall be executed on behalf of the Company by one of the Authorized Representatives of the Company. The signature of such Authorized Representative on the Purchase Money Notes may be manual or facsimile.

(b) Purchase Money Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Representative of the Company shall bind the Company, notwithstanding the fact that such individuals or any of them have ceased to hold such offices prior to the execution and delivery of such Purchase Money Notes or did not hold such offices at the date of issuance of such Purchase Money Notes.

(c) Each Purchase Money Note executed and delivered by the Company or the Paying Agent on the Closing Date shall be dated as of the Closing Date. All other Purchase Money Notes that are executed and delivered after the Closing Date for any other purpose under this Agreement shall be dated the date of their execution.

(d) Purchase Money Notes issued upon transfer, exchange or replacement of other Purchase Money Notes shall be issued in Authorized Denominations reflecting the original aggregate principal or face amount of the Purchase Money Notes so transferred, exchanged or replaced, but shall represent only the current outstanding principal or face amount of the Purchase Money Notes so transferred, exchanged or replaced. In the event that any Purchase Money Note is divided into more than one Purchase Money Note in accordance with this Article II, the original principal or face amount of such Purchase Money Note shall be proportionately divided among the Purchase Money Notes delivered in exchange therefor and shall be deemed to be the original aggregate principal or face amount of such subsequently issued Purchase Money Notes.

#### Section 2.7 Registration, Registration of Transfer and Exchange.

(a) The Company shall cause to be kept a register (the “**Purchase Money Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration, and the registration of transfers, of Purchase Money Notes. The Paying Agent is hereby initially appointed “**Purchase Money Note Registrar**” for the purpose of registering Purchase Money Notes and transfers of such Purchase Money Notes as

herein provided. Upon any resignation or removal of the Purchase Money Note Registrar, the Company shall promptly appoint a successor.

(b) If a Person other than the Paying Agent is appointed by the Company as Purchase Money Note Registrar, the Company will give the Paying Agent prompt notice of the appointment of a Purchase Money Note Registrar and of the location, and any change in the location, of the Purchase Money Note Registrar, and the Paying Agent shall have the right to inspect the Purchase Money Note Register at all reasonable times and to obtain copies thereof and the Paying Agent shall have the right to rely upon a certificate executed on behalf of the Purchase Money Note Registrar by an officer thereof as to the names and addresses of the Holders of the Purchase Money Notes and the principal or face amounts and numbers of such Purchase Money Notes. Upon written request at any time, the Purchase Money Note Registrar promptly shall provide to the Company or the Secured Party a current list of Holders as reflected in the Register.

(c) Subject to this Section 2.7, upon surrender for registration of transfer of any Purchase Money Notes, the Company shall execute and deliver, in the name of the designated transferee or transferees, one or more new Purchase Money Notes of any Authorized Denomination and of like terms and a like aggregate principal or face amount.

(d) At the option of the Holder, Purchase Money Notes may be exchanged for Purchase Money Notes of like terms, in any Authorized Denominations and of like aggregate principal or face amount upon surrender of the Purchase Money Notes to be exchanged at such office or agency. Whenever any Purchase Money Note is surrendered for exchange, the Company shall execute and deliver the Purchase Money Notes that the Purchase Money Noteholder making the exchange is entitled to receive.

(e) All Purchase Money Notes issued upon any registration of transfer or exchange of such Purchase Money Notes shall be the valid obligations of the Company, evidencing the same debt (to the extent they evidence debt), and entitled to the same benefits under this Agreement, as the Purchase Money Notes surrendered upon such registration of transfer or exchange.

(f) Every Purchase Money Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Money Note Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

(g) No service charge shall be made to a Holder for any registration of transfer or exchange of Purchase Money Notes, but the Company or the Paying Agent may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(h) No Purchase Money Note may be sold or transferred (including, without limitation, by pledge or hypothecation) unless such sale or transfer is exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and is exempt under applicable State securities laws and the laws of any other applicable jurisdiction.

(i) Notwithstanding any provision to the contrary herein, so long as a Purchase Money Note remains outstanding, transfers and exchanges of a Purchase Money Note, in whole or in part, shall only be made in accordance with this Section 2.7.

(a) Any purported transfer or exchange of a Purchase Money Note not in accordance with this Section 2.7 shall be null and void *ab initio* and shall not be given effect for any purpose hereunder.

(b) Nothing in this Section 2.7 shall be construed to limit any contractual restrictions on transfers of Purchase Money Notes or interests therein that may apply to any Person.

(c) Notwithstanding anything contained herein to the contrary, neither the Paying Agent nor the Purchase Money Note Registrar shall be responsible for ascertaining whether any transfer complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the Code or the Investment Company Act of 1940, as amended; *provided* that if a certificate is specifically required by the express terms of this Agreement to be delivered to the Paying Agent by a holder or transferee of a Purchase Money Note, the Paying Agent shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Agreement and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

(d) Notwithstanding the foregoing, with the advice of counsel to the Company, the Company may adopt one or more other forms of transfer certificate with respect to the transfer of the Purchase Money Notes after the Closing Date.

#### Section 2.8 Mutilated, Defaced, Destroyed, Lost or Stolen Purchase Money Notes.

(a) If (i) any mutilated or defaced Purchase Money Note is surrendered to a Paying Agent, or if there shall be delivered to the Company and the Paying Agent evidence to their reasonable satisfaction of the destruction, loss or theft of any Purchase Money Note, and (ii) there is delivered to the Company and the Paying Agent such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or such Paying Agent that such Purchase Money Note has been acquired by a bona fide purchaser, the Company shall execute and deliver, in lieu of any such mutilated, defaced destroyed, lost or stolen Purchase Money Note, a new Purchase Money Note, of like tenor (including the same date of issuance) and equal principal or face amount registered in the same manner, dated the date of its authentication, bearing interest from the date to which interest has been paid on the mutilated, defaced, destroyed, lost or stolen Purchase Money Note and bearing a number not contemporaneously outstanding.

(b) If, after delivery of such new Purchase Money Note, a bona fide purchaser of the predecessor Purchase Money Note presents for payment, transfer or exchange such predecessor Purchase Money Note, the Company, the Purchase Money Note Registrar and the Paying Agent shall be entitled to recover such new Purchase Money Note from the Person to whom it was delivered or any Person taking therefrom, and shall be entitled to recover upon the security or

indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Company and the Paying Agent in connection therewith.

(c) In case any such mutilated, defaced, destroyed, lost or stolen Purchase Money Note has become due and payable, the Company may in its discretion, instead of issuing a new Purchase Money Note pay such Purchase Money Note without requiring surrender thereof except that any mutilated Purchase Money Note shall be surrendered.

(d) Upon the issuance of any new Purchase Money Note under this Section 2.8, the Company may require the payment by the registered holder thereof of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

(e) Every new Purchase Money Note issued pursuant to this Section 2.8 in lieu of any mutilated, defaced, destroyed, lost or stolen Purchase Money Note shall constitute an original additional contractual obligation of the Company, and such new Purchase Money Note shall be entitled, subject to Section 2.8(b), to all the benefits of this Agreement equally and proportionately with any and all other Purchase Money Notes duly issued hereunder.

The provisions of this Section 2.8 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Purchase Money Notes.

Section 2.9 Payments with Respect to the Purchase Money Notes. All reductions in the principal amount of a Purchase Money Note (or one or more predecessor Purchase Money Notes) effected by payments of installments of principal made on any Distribution Date shall be binding upon all future Holders of such Purchase Money Note and of any Purchase Money Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, whether or not such payment is noted on such Purchase Money Note. Subject to the foregoing, each Purchase Money Note delivered under this Agreement and upon registration of transfer of or in exchange for or in lieu of any other Purchase Money Note shall carry the rights of unpaid interest and principal or distributions that were carried by such other Purchase Money Note.

Section 2.10 Persons Deemed Owners. The Company, the Paying Agent, and any agent of the Company or the Paying Agent shall treat the Person in whose name any Purchase Money Note is registered as the owner of such Purchase Money Note on the Register on the applicable Record Date for the purpose of receiving payments of principal of and interest on or other distributions with respect to such Purchase Money Note and on any other date for all other purposes whatsoever (whether or not such payments are overdue), and neither the Company, nor the Paying Agent, nor any agent of the Company or the Paying Agent, shall be affected by notice to the contrary.

Section 2.11 Cancellation. All Purchase Money Notes surrendered for payment, registration or transfer, exchange or redemption, or deemed lost or stolen, shall, if surrendered to any Person other than the Paying Agent, be delivered to the Paying Agent, shall be promptly canceled by it and may not be reissued or resold. No Purchase Money Notes shall be issued in lieu of or in exchange for any Purchase Money Notes canceled as provided in this Section 2.11,



except as expressly permitted by this Agreement. All cancelled Purchase Money Notes held by the Paying Agent shall be destroyed or held by the Paying Agent in accordance with its standard retention policy unless the Company shall direct that they be returned to it.

### **ARTICLE III ACCOUNTS**

Section 3.1 Collection Account. On the date hereof, the Company shall establish the Collection Account with the Paying Agent. The Collection Account shall be held in trust by the Paying Agent for the benefit of Secured Party and the Company. For all Loan Proceeds relating to any Due Period ending prior to or on October 31, 2009, the Receiver shall transfer such Loan Proceeds not later than two (2) Business Days prior to the applicable Distribution Date to the Paying Agent for deposit into the Collection Account. For all Loan Proceeds relating to any Due Period commencing on or after November 1, 2009, (i) the Receiver shall transfer any such Loan Proceeds that may be received by it within two (2) Business Days of receipt of such funds to the Paying Agent for deposit into the Collection Account, and (ii) the Company shall transfer, or cause the Servicer or Subservicer to transfer, all Loan Proceeds within two (2) Business Days of receipt of such funds to the Paying Agent for deposit into the Collection Account. No funds from any other source (other than interest or earnings on the Loan Proceeds and funds transferred from the Liquidity Reserve Account pursuant to Section 3.3) shall be commingled in the Collection Account. Funds transferred from the Liquidity Reserve Account to the Collection Account pursuant to Section 3.3 in a given Due Period shall be deemed to be (i) Interest Proceeds received in such Due Period in the case of any interest and earnings thereon while in the Liquidity Reserve Account, (ii) Interest Proceeds received in such Due Period if such funds were Interest Proceeds when deposited into the Liquidity Reserve Account and (iii) Principal Proceeds received in such Due Period if such funds were Principal Proceeds when deposited into the Liquidity Reserve Account. Amounts on deposit in (or that are required to have been deposited into) the Collection Account (including interest and earnings thereon) shall be applied (i) to the payment of Servicing Expenses and Pre-Approved Charges in accordance with Section 3.1, and (ii) to transfers to the Distribution Account in accordance with Section 3.2. The Managing Member may upon instruction to the Paying Agent request the withdrawal of funds from the Collection Account at any time to pay Servicing Expenses and Pre-Approved Charges, and if the Receiver, the Company, the Servicer or any Subservicer at any time erroneously deposits any amount into the Collection Account, the Company may withdraw such amount and pay such amount to the Receiver, the Company, the Servicer or any Subservicer, as applicable. The Paying Agent shall invest the amounts on deposit in the Collection Account in Permitted Investments in accordance with investment directions from the Company but with a maturity that allows for their allocation and transfer to the Distribution Account in accordance with Section 3.2. The Paying Agent shall be authorized and directed to withdraw funds from the Collection Account only to transfer funds to the Distribution Account pursuant to Section 3.2 and as otherwise set forth in this Agreement and not for any other purpose. The Collection Account (and all funds therein) shall be subject to the security interest granted to the Secured Party under the Reimbursement and Security Agreement and to the Account Control Agreement.

Section 3.2 Distribution Account. On the date hereof, the Company shall establish the Distribution Account with the Paying Agent. The Distribution Account shall be held in trust by the Paying Agent for the benefit of Secured Party and the Company. The Paying Agent shall

transfer from the Collection Account to the Distribution Account, for application pursuant to Section 5.1, not later than 12:00 p.m. New York time on the Business Day immediately preceding each Distribution Date, the amount specified in the Distribution Date instructions delivered pursuant to Section 11.4 for such Distribution Date. All income or gain realized from the investment of funds deposited in the Distribution Account held by the Paying Agent shall be for the benefit of the Paying Agent. No funds from any other source shall be commingled in the Distribution Account. Amounts on deposit in (or that are required to have been deposited into) the Distribution Account (including interest and earnings thereon) shall be allocated and may be withdrawn and disbursed only in accordance with the provisions of Section 5.1. The Paying Agent shall be authorized and directed to withdraw funds from the Distribution Account only to make disbursements in accordance with this Agreement and not for any other purpose. The Distribution Account (and all funds therein) shall be subject to the security interest granted to the Secured Party under the Reimbursement and Security Agreement and to the Account Control Agreement.

**Section 3.3    Liquidity Reserve Account.** The Company, in its discretion, may establish a liquidity reserve (the “**Liquidity Reserve**”) for the purpose of allocating funds to the Collection Account. The Liquidity Reserve Account shall be held in trust by the Paying Agent for the benefit of Secured Party and the Company and shall be established and maintained for the sole purpose of holding and distributing the Liquidity Reserve funds. The Company may instruct the Paying Agent in the Distribution Date instructions delivered pursuant to Section 11.4 to fund the Liquidity Reserve as the Company deems appropriate, in the exercise of its reasonable discretion in accordance with the provisions of Section 5.1. The Paying Agent will fund such amount on the applicable Distribution Date in accordance with the Distribution Date instructions delivered pursuant to Section 11.4 for such Distribution Date. At any time after the Company instructs the Paying Agent to fund the Liquidity Reserve Account, the Company may, in the exercise of its reasonable discretion, instruct the Paying Agent to release some or all of the funds from the Liquidity Reserve Account and allocate and distribute such released funds to the Collection Account. At the time of the Final Distribution, the Paying Agent shall allocate and distribute all remaining funds held in the Liquidity Reserve Account to the Collection Account from which account the funds will be transferred to the Distribution Account and made available for distribution in accordance with the Priority of Payments pursuant to this Agreement. The Paying Agent shall invest the amounts on deposit in the Liquidity Reserve Account in Permitted Investments in accordance with investment directions from the Company. No funds from any other source (other than interest or earnings on the funds held in the Liquidity Reserve Account) shall be commingled in the Liquidity Reserve Account. The Paying Agent shall be authorized and directed to withdraw funds from the Liquidity Reserve Account only to make disbursements in accordance with this Agreement and not for any other purpose. The Liquidity Reserve Account (and all funds therein) shall be subject to the security interest granted to the Secured Party under the Reimbursement and Security Agreement and to the Account Control Agreement.

## **ARTICLE IV**

### **ADDITIONAL PROVISIONS RELATED TO THE ACCOUNTS**

**Section 4.1    Investment of Funds in Accounts.**

(a) The Company shall at all times direct the Paying Agent to, and, upon receipt of such investment direction, the Paying Agent shall, invest, pending deposit into the Collection Account or the Liquidity Reserve Account, as applicable, amounts received and retained in such Accounts, as so directed in Permitted Investments. If the Company does not provide the Paying Agent with investment directions pursuant to Sections 3.1, 3.3 or 4.1, the balance standing to the credit of the Collection Account or Liquidity Reserve Account, as applicable, will remain uninvested with no liability for interest thereon. It is agreed and understood that the Paying Agent may earn fees associated with Permitted Investments.

(b) Whenever the Paying Agent is directed or authorized in accordance with the terms hereof to make a transfer of funds among the Collection Account, the Distribution Account and the Liquidity Reserve Account (collectively, the “Accounts”), after application of all other available funds, the Paying Agent shall allocate to the Account to which such funds are to be transferred a portion of any Permitted Investment that would otherwise have to be liquidated to accomplish such transfer in an amount corresponding to the amount to be so transferred. Whenever the Paying Agent is directed or authorized in accordance with the terms hereof to make a transfer of funds from the Accounts (unless such transfer is between Accounts), if, after application of all other available funds, liquidation of a Permitted Investment is necessary to make any such transfer, the Paying Agent is authorized to liquidate such Permitted Investment. If any Permitted Investment so liquidated is then allocated to more than one Account, and it is not possible to liquidate only the portion of such Permitted Investment allocated to the Account from which such transfer is to be made, then the entire Permitted Investment shall be liquidated, and the proceeds of such liquidation shall be allocated to the Accounts involved in the same proportion as the allocation of such Permitted Investment, except that the net costs and expenses, if any, of such liquidation (including any loss of principal) shall be allocated entirely to the Account from which the transfer of funds was required to be made. The Paying Agent shall liquidate all those Permitted Investments which can be liquidated without interest cost or penalty before it shall liquidate any Permitted Investment, the liquidation of which would involve an interest cost or penalty. The Paying Agent shall have no liability with respect to any interest cost or penalty on the liquidation of any Permitted Investment pursuant to this Section 4.1.

(c) The Paying Agent shall have no liability with respect to Permitted Investments (or any losses resulting therefrom) made at the direction of the Company or the Secured Party pursuant to this Agreement.

(d) All references in this Agreement to the Accounts and to cash, moneys or funds therein or balances thereof shall include the investments in which such moneys are invested.

(e) The Paying Agent may execute any investment directions provided to it in respect of the Permitted Investments through its Affiliates, and neither the Paying Agent nor its Affiliates shall have a duty to monitor the investment rating of any such Permitted Investments. The Paying Agent will have no obligation to invest or reinvest any funds if all or a portion of such funds are deposited with the Paying Agent after 11:00 a.m. New York time on the day of deposit. Directions to invest or reinvest that are received after 11:00 a.m. New York time will be treated as if received on the following Business Day in New York. Subject to Section 4.1(b) above, the Paying Agent will have the power to sell or liquidate Permitted Investments whenever the Paying Agent will be required to make a transfer pursuant to the terms hereof. The Paying

Agent will have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of any funds in accordance with the terms of this Agreement.

Section 4.2 Interest. Any interest or other earnings accrued on any balances in any Account, or on any investment thereof, shall be credited to and accumulated in such Account and thereafter be applied without differentiation from other funds in such Account.

Section 4.3 Inadequately Identified Amounts. If the Paying Agent receives any amount which is inadequately or incorrectly identified and the Paying Agent is unable to determine the Account into which such amount is to be credited, the Paying Agent shall notify the Company and the Secured Party of such event and shall request instructions as to the Account into which such amount should be credited. The Paying Agent shall credit such amount to the Collection Account until such time as it receives instructions from the Company (with the written consent of the Secured Party) stating that such amount should be credited to another Account in accordance with this Agreement, in which case it shall credit such amount, if still available, to the Account designated by the Company (with the written consent of the Secured Party).

Section 4.4 Payment Procedures. All amounts which are from time to time distributable by the Paying Agent from the Distribution Account in accordance herewith shall be paid by the Paying Agent on the Distribution Date in immediately available funds (but not before such amounts become immediately available to it). All payments made by the Paying Agent shall be made to such account(s) as shall be designated in writing by the Company in accordance with the Distribution Date Report and this Agreement.

## ARTICLE V DISTRIBUTIONS

Section 5.1 Priority of Payments. Notwithstanding any other provision in this Agreement, before each Distribution Date, the Paying Agent shall disburse amounts transferred to the Distribution Account from the Collection Account pursuant to Section 3.2 as follows and for application by the Paying Agent in accordance with the following priorities (the “**Priority of Payments**”) and the Distribution Date instructions delivered pursuant to Section 11.4:

(a) On each Distribution Date, Interest Proceeds, net of amounts used to pay Servicing Expenses or Pre-Approved Charges during the applicable Due Period, will be distributed in the following order of priority:

(i) *first*, to pay the fees and expenses of the Custodian and Paying Agent in accordance with the terms of this Agreement;

(ii) *second*, (x) to reimburse the Managing Member for any Working Capital Advances made during the applicable Due Period (or any prior Due Period to the extent not previously reimbursed), but only to the extent the same were used to pay or reimburse costs or expenses constituting Servicing Expenses, fees and expenses of the Custodian and Paying Agent or Pre-Approved Charges, and (y) in the event that a predecessor Managing Member has been removed as the Managing Member pursuant to Section 3.2 of the LLC Operating Agreement, if there are Interest Proceeds remaining

after payment of the Managing Member pursuant to the preceding clause (x), to reimburse such predecessor for any Working Capital Advances made by it while serving as Managing Member during the applicable Due Period (or any prior Due Period to the extent not previously reimbursed), but only to the extent the same were used to pay or reimburse costs or expenses constituting Servicing Expenses, fees and expenses of the Custodian and Paying Agent or Pre-Approved Charges;

(iii) *third*, (x) for each Due Period ending prior to or on October 31, 2009, to pay to the Initial Member an amount equal to the Management Fee, together with any unpaid portion of the Management Fee for any prior Due Period (in each case net of any amounts set off against Loan Proceeds for servicing fees owing to any Existing Servicer), and (y) for each Due Period commencing on or after November 1, 2009, to pay to the Managing Member an amount equal to the Management Fee, together with any unpaid portion of the Management Fee for any prior Due Period (in each case net of any amounts set off against Loan Proceeds for servicing fees owing to any servicer);

(iv) *fourth*, to pay to the Purchase Money Note Guarantor the full amount of the Purchase Money Note Guaranty Fee together with any accrued interest thereon then due and payable;

(v) *fifth*, to pay any reimbursement amounts together with any accrued interest thereon, due and payable as of the Determination Date for the applicable Due Period to the Purchase Money Note Guarantor pursuant to the Reimbursement and Security Agreement for previous payments made by it under the Purchase Money Note Guaranty;

(vi) *sixth*, to pay the aggregate amount of interest accrued through and including the Determination Date for the applicable Due Period and unpaid on the Purchase Money Note;

(vii) *seventh*, to fund any Liquidity Reserve Account established by the Company as and to the extent permitted by Section 3.3 of this Agreement; and

(viii) *eighth*, all remaining Interest Proceeds shall be paid to the Initial Member and the Private Owner in accordance with Section 6.6 of the LLC Operating Agreement, subject to Section 10.2 of the Reimbursement and Security Agreement;

For purposes of item (a)(iii)(y) above, in the event that a predecessor Managing Member has been removed pursuant to Section 3.2 of the LLC Operating Agreement, (x) if such removal occurred on a date other than the first day or the last day of a given Due Period, then the amount of the Management Fee payable for such Due Period shall be allocated between the current Managing Member and the predecessor Managing Member pro rata on the basis of the number of days during such Due Period on which each of them respectively served as Managing Member and (y) if there are Interest Proceeds remaining after payment of the Management Fee to the current Managing Member for the applicable Due Period and prior Due Periods (giving effect to the preceding clause (x)), such Interest Proceeds shall be applied to the payment of the unpaid portion of the Management Fee, if any, payable to such predecessor Managing Member for the

applicable Due Period and all prior Due Periods (giving effect to the preceding clause (x)) before any remaining Interest Proceeds are applied to payment of the amounts specified in items (a)(iv) through (viii) above.

(b) Without limiting any other applicable provision herein regarding the payment of Principal Proceeds, on each Distribution Date Principal Proceeds, net of amounts used to pay Servicing Expenses or Pre-Approved Charges during the applicable Due Period to the extent not paid from Interest Proceeds, will be distributed in the following order of priority:

(i) *first*, if there are any outstanding amounts due and payable under items (a)(i) through (vi) above, then to such items in the order of priority set forth therein;

(ii) *second*:

(A) if each Performance Test has been satisfied for such Distribution Date, eighty-five percent (85%) of the remaining amount of Principal Proceeds shall be utilized to pay down principal on the Purchase Money Note; or

(B) if any Performance Test is not satisfied on the Determination Date prior to such Distribution Date, all of the remaining amount of Principal Proceeds shall be utilized to pay down principal on the Purchase Money Note until the occurrence of a Determination Date on which all Performance Tests are met or until the balance due and payable on such Purchase Money Note is reduced to zero;

(iii) *third*, to fund any Liquidity Reserve Account established by the Company as and to the extent permitted by Section 3.3 of this Agreement; and

(iv) *fourth*, all remaining Principal Proceeds shall be paid to the Initial Member and the Private Owner in accordance with Section 6.6 of the LLC Operating Agreement, subject to Section 10.2 of the Reimbursement and Security Agreement.

Section 5.2 Notices of Payment Failure. The Paying Agent shall deliver prompt written notice to the Company and Secured Party in the event that it fails to receive in full the amount required to be paid by the Company, which notice shall include a statement that the required payment was not made by the Company in full and shall set forth the amount of such required payment and in the case of receipt of a partial payment, the amount of such partial payment.

## ARTICLE VI CUSTODIAL DOCUMENTS

### Section 6.1 Delivery of Custodial Documents.

(a) Delivery. As soon as practical after October 9, 2009, the Company shall deliver or cause to be delivered the Custodial Documents to the Custodian at the office of the Custodian at Citibank, N.A., Document Custodian, 5280 Corporate Drive, Frederick, Maryland 21703 (the "Office").

(b) Collateral Certificate; Exceptions. The Custodian shall make available during normal business hours, and at such other hours as may be reasonable in the circumstances, to the Company (and representatives of the Company and, if the Company so determines, the Receiver) an office space at the Office that is sufficient to accommodate up to six (6) people to review the Custodial Documents with representatives of the Custodian for a period of not more than ten (10) days prior to the delivery of possession of the same to the Custodian. Within thirty (30) days after delivery of the Custodial Documents to the Custodian, the Custodian shall execute and deliver to the Company and the Secured Party a certificate, substantially in the form annexed hereto as Exhibit B, to the effect that the Custodian has received and reviewed the Custodial Documents and attaching a Loan Schedule and Exception List ("**Collateral Certificate**"). In reviewing the documents provided with respect to a Loan, the Custodian shall examine the same in accordance with the procedures set forth on Exhibit H hereto and to determine, with respect to each such document, whether it (i) appears regular on its face (*i.e.*, is not mutilated, damaged, torn, defaced or otherwise physically altered), (ii) relates to such Loan, (iii) has been executed by the named parties thereon, (iv) where applicable, purports to be recorded, and (v) appears to be what it purports to be.

(c) Custodial Documents. For each Loan and REO Property, to the extent applicable, the Custodial Documents shall include the following:

(i) the original Note bearing all intervening endorsements and endorsed "Pay to the order of Franklin Venture, LLC, without recourse" and signed in the name of the Federal Deposit Insurance Corporation as Receiver for Franklin Bank, S.S.B., and an allonge providing for the endorsement of the Note and endorsed "Pay to the order of \_\_\_\_\_, without recourse" and signed by the Company as the last endorsee; and in the event that the original Note is not available, a fully executed Assignment and Lost Instrument Affidavit in the form of Exhibit D to the Contribution Agreement;

(ii) the original Mortgage with evidence of recording thereon, or a certified copy thereof from the applicable Recording Office, or a copy thereof together with an officer's certificate of the related Borrower, title company, escrow agent or closing attorney certifying that such represents a true and correct copy of the original and that such original has been submitted for recordation in the applicable Recording Office;

(iii) the originals of all assumption, modification, consolidation or extension agreements (if any) with evidence of recording thereon, or certified copies thereof from the applicable Recording Office, or copies thereof together with a certification by or other similar evidence from the applicable Recording Office or an officer's certificate of the related Borrower, title company, escrow agent or closing attorney certifying that such represents a true and correct copy of the original and that such original has been submitted for recordation in the applicable Recording Office;

(iv) the REO Property Files;

(v) except in the case of any MERS Designated Loan, the original Mortgage Assignment in blank for each Loan, in form and substance acceptable for

recording and signed in the name of (x) the Federal Deposit Insurance Corporation as Receiver for Franklin Bank, S.S.B. in the case of Mortgage Assignment to the Company, and (y) the Company, in the case of Mortgage Assignment to the Secured Party;

(vi) except in the case of any MERS Designated Loan, the originals of all intervening Mortgage Assignments (if any) with evidence of recording thereon, showing an unbroken chain of title from the originator thereof to the Company, or certified copies thereof from the applicable Recording Office, or copies thereof together with an officer's certificate of the related Borrower, title company, escrow agent or closing attorney certifying that such represents a true and correct copy of the original and that such original has been submitted for recordation in the applicable Recording Office;

(vii) the original attorney's opinion of title and abstract of title or the original mortgage title insurance policy or, if the original mortgage title insurance policy has not been issued, the irrevocable commitment to issue the same;

(viii) the originals of all Collateral Documents executed in connection with the Loan, if available;

(ix) Uniform Commercial Code financing statements with recording information thereon from the Recording Offices if necessary to perfect the security interest of the Loan under the Uniform Commercial Code;

(x) solely with respect to each MERS Designated Loan, a MERS Report; and

(xi) any bailee letters regarding any Notes or other Custodial Documents held by the bailee.

(d) **Supplemental Deliveries.** The Company agrees that it shall deliver or cause to be delivered to the Custodian (i) any and all additional Custodial Documents with respect to a Loan within ten (10) days following the execution and delivery of any such instrument and (ii) any and all Custodial Documents with respect to any REO Property within ten (10) days following receipt of any such instrument. All such deliveries of Custodial Documents pursuant to this Section 6.1(d) shall be accompanied by a certificate in the form of Exhibit C (a "**Supplemental Delivery Certificate**"), prepared by an Authorized Representative of the Company, itemizing the Custodial Documents being delivered to the Custodian in such delivery and identifying the Loan or REO Property with respect to which each such Custodial Document relates. After the receipt thereof, the Custodian shall (A) examine the additional Custodial Documents provided with respect to a Loan or the REO Property, as the case may be, in accordance with the review procedures set forth on Exhibit H (the "**Review Procedures**") and, to determine, with respect to each such document, whether it (i) appears regular on its face (*i.e.*, is not mutilated, damaged, torn, defaced or otherwise physically altered), (ii) relates to such Loan or REO Property, (iii) has been executed by the named parties thereon, (iv) where applicable, purports to be recorded, and (v) appears to be what it purports to be, and (B) ensure that all such Custodial Documents with respect to a Loan are placed in the file for the related Loan. In the event the Custodian determines that the Supplemental Delivery Certificate is inaccurate, the Custodian shall so notify



the Company in writing no later than the first Business Day following its receipt of the Supplemental Delivery Certificate. Within 7 Business Days after receipt of the additional Custodial Documents by the Custodian, the Custodian shall provide the Company (with a copy to the Secured Party) with a Collateral Certificate, to the effect that the Custodian has received and reviewed the additional Collateral Documents and attaching a revised Loan Schedule and Exception List.

(e) Loan Schedules; Exception Lists; Review Procedures. Each Loan Schedule and Exception List shall list all Exceptions using such codes as shall be in form and substance agreed to by the Custodian and the Company. Each Loan Schedule and Exception List delivered by the Custodian to the Company shall supersede and cancel the Loan Schedule and Exception List previously delivered by the Custodian to the Company hereunder, and shall replace the then existing Loan Schedule and Exception List to be attached to the Collateral Certificate. Notwithstanding anything to the contrary set forth herein, in the event that the Loan Schedule and Exception List attached to the Collateral Certificate is different from the most recently delivered Loan Schedule and Exception List, then the most recently delivered Loan Schedule and Exception List shall control and be binding upon the parties hereto. The delivery of each Loan Schedule and Exception List to the Company shall constitute the Custodian's representation that, other than the Exceptions listed as part of the last delivered Loan Schedule and Exception List: (i) all documents required to be delivered in respect of a Loan or REO Property pursuant to Section 6.1(c) of this Agreement have been delivered and are in the possession of the Custodian as part of the Custodial Documents, (ii) all such documents have been reviewed and examined by the Custodian in accordance with the review procedures specified on Exhibit H and in this Agreement and appear on their face to be regular and to relate to such Loan or REO Property and to satisfy (except in the case of a MERS Designated Loan) the requirements set forth in Section 6.1(c) of this Agreement, (iii) subject to the provisions of Section 7.2(b), each Loan (except in the case of a MERS Designated Loan) identified on such Loan Schedule and Exception List is being held by the Custodian as the bailee for the Company and (iv) subject to the provisions of Section 7.2(b), each MERS Designated Loan is being held by MERS® as the nominee for the Company. In connection with a Loan Schedule and Exception List delivered hereunder by the Custodian, the Custodian shall make no representations as to and shall not be responsible for verifying, except as set forth in Section 6.1(b) of this Agreement, (A) the validity, legality, enforceability, due authorization, recordability, sufficiency, or genuineness of any of the Custodial Documents, or (B) the collectibility, insurability, effectiveness or suitability of any such Loan or REO Property.

## Section 6.2 Examination of Custodian Files; Copies.

(a) Upon reasonable prior written notice to the Custodian, the Company and the Secured Party and their respective agents, accountants, attorneys and auditors, and any other Persons designated by the Company or the Secured Party, as applicable, in writing as authorized to access and review the Custodial Documents, shall be permitted during normal business hours to examine the Custodial Documents.

(b) Upon the request of the Company or the Secured Party, and at the cost and expense of the requesting party, the Custodian shall provide copies of any requested Custodial

Documents; provided, however, the requesting party shall reimburse the Custodian for the actual, reasonable and customary costs incurred in providing copies of such custodial documents.

Section 6.3 Shipment of Custodial Documents. Prior to any shipment of any Custodial Documents hereunder, the Company shall deliver to the Custodian written instructions as to the method of shipment and the shipper that the Custodian is to utilize in connection with the transmission of such Custodial Documents. The Company shall arrange for the provision of such services at its sole cost and expense (or, at the Custodian's option, reimburse the Custodian for all costs and expenses incurred by the Custodian consistent with such instructions) and will maintain such insurance against loss or damage to the Custodial Documents as the Company may deem appropriate. It is expressly agreed that in no event shall the Custodian have any liability for any losses or damages to any Person, including the Company, arising out of actions of the Custodian pursuant to this Section 6.3 consistent with the instructions of the Company. In the event that the Custodian does not receive such written instructions, the Custodian shall be authorized and shall be indemnified as provided herein to utilize a nationally recognized courier service.

## ARTICLE VII CUSTODIAN

Section 7.1 Appointment of the Custodian. Subject to the terms and conditions of this Agreement, the Company hereby appoints the Bank to perform the duties of the Custodian, and the Custodian hereby accepts such appointment, to act as the Company's agent, custodian and bailee to hold and maintain custody of the Custodial Documents.

### Section 7.2 Obligations of the Custodian.

(a) Maintenance of Custody. Subject to the provisions of Section 7.2(b), the Custodian shall (i) hold and maintain continuous custody of all Custodial Documents received by it in trust for and for the benefit of the Company in facilities that are secure and fire resistant in accordance with industry standards, (ii) act with the same degree of care and skill that the Custodian exercises with respect to any loan files relating to similar loans owned, serviced or held as custodian by the Custodian and, in any event, in accordance with customary standards for such custody, (iii) reflect in its records the interest of the Company therein, (iv) make disposition of the Custodial Documents only in accordance with the provisions of this Agreement, and (v) subject to the provisions of Section 7.2(b), hold all Custodial Documents received by it for the exclusive use and benefit of the Company, and make disposition thereof only in accordance with written instructions furnished by the Company.

(b) Pledge of Loans and REO Property to the Secured Party. As security for certain obligations of the Company to the Secured Party under the Reimbursement and Security Agreement, the Company has pledged all of its rights, title and interest in and to the Loans, the REO Property and the Custodial Documents to the Secured Party. Accordingly, notwithstanding anything to the contrary contained in this Agreement, the Custodian acknowledges and agrees that it holds possession of the Notes and the other Custodial Documents for the Secured Party's benefit pursuant to Section 9-313(c) of the Uniform Commercial Code, and the Custodian shall mark its records to reflect the pledge of the Loans, the REO Property and the Custodial

Documents by the Company to the Secured Party. The Custodian's records shall reflect the pledge of the Loans, the REO Property and the Custodial Documents by the Company to the Secured Party until such time as the Custodian receives written instructions from the Company, including a certification that it is entitled pursuant to the Reimbursement and Security Agreement to request the release of the Custodial Documents being requested for release and that the Loans and the REO Property are no longer pledged by the Company to the Secured Party, at which time the Custodian shall change its records to reflect the release of the pledge of the Loans, the REO Property and the Custodial Documents and that the Custodian is holding the Loans, REO Property and the Custodial Documents as custodian for, and for the benefit of, the Company; provided, however, that, subject to the provisions of Section 7.2(d), such pledge shall not affect the right of the Custodian to rely on instructions from the Company hereunder. The Custodian shall (i) make a written request for the return of all Collateral Documents that are removed from the Custodian's possession within fifteen (15) days after their removal (if the same are not returned before such time) and thereafter, continue to use commercially reasonable efforts to obtain the return of such removed Collateral Documents until such time as the Collateral Documents are returned, and (ii) provide on a monthly basis to the Secured Party and the Company an aging report identifying the released (and unreturned) Collateral Documents.

(c) Qualification To Conduct Business. Nothing contained in this Agreement shall be construed to require the Custodian to qualify to do business in any jurisdiction other than (i) any jurisdiction in which any Custodial Document is or may be held by the Custodian from time to time under this Agreement, or (ii) any jurisdiction in which the ownership of its property or the conduct of its business requires such qualification and in which the failure to qualify could have a material adverse effect on the Custodian or its property or business or on the ability of the Custodian to perform its duties and obligations under this Agreement.

(d) Events of Default Under the Reimbursement and Security Agreement. Upon the Custodian's receipt from the Secured Party of written notice at its Office that an Event of Default under the Reimbursement and Security Agreement (and as defined therein) has occurred and is continuing, the Custodian shall promptly notify the Secured Party in writing and seek instructions from (and take instructions only from) the Secured Party as to any action to be taken by the Custodian hereunder.

(e) Third Party Demands. In the event that (i) the Company or the Custodian shall be served by a third party with any type of levy, attachment, writ or court order with respect to any Custodial Document or (ii) a third party shall institute any court proceeding by which any Custodial Document shall be required to be delivered otherwise than in accordance with the provisions of this Agreement, the party receiving such service shall promptly deliver or cause to be delivered to the other parties to this Agreement copies of all court papers, orders, documents and other materials concerning such proceedings. The Custodian shall, to the extent permitted by law, continue to hold and maintain all of the Custodial Documents that are the subject of such proceedings pending a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof. Upon final determination of such court, the Custodian shall dispose of such Custodial Documents as directed by the Company, which shall give a direction consistent with such court determination.

(f) Release of Custodial Documents. Subject to the provisions of Section 7.2(e), the Custodian shall retain the Custodial Documents in its possession and custody at all times during the term hereof unless any one of the following events has occurred:

(i) If the Custodian has resigned or has been removed in accordance with the provisions of Section 9.1, the Custodian shall deliver the Custodial Documents to the successor Custodian in accordance with Section 9.1.

(ii) If the Custodian has received a notice from an Authorized Representative of the Company stating that the Company has received all amounts due under a Loan, or a discounted payoff as payment in full of such Loan, the Custodian shall release the related Custodial Documents to the Company or to the Managing Member in accordance with the instructions provided in such notice.

(iii) If the Custodian has received notice from an Authorized Representative of the Company that the Company or the Managing Member needs the Custodial Documents in order to foreclose on a Mortgaged Property, accept a deed in lieu thereof or modify or restructure the terms thereof, the Custodian shall release the related Custodial Documents to the Company or to the Managing Member in accordance with the instructions provided in such notice.

(iv) If the Custodian has received notice from an Authorized Representative of the Company that the Company has agreed to sell a Loan or the Collateral, the Custodian shall deliver the related Custodial Documents to the Company or to the Managing Member in accordance with the instructions provided in such notice.

(g) No Other Duties. The Custodian shall have no duties or responsibilities as Custodian except those that are specifically set forth herein and shall not be liable except for the performance of such duties and obligations. No implied covenants or obligations shall be read into this Agreement.

(h) No Investigation. The Custodian shall be under no obligation to make any investigation into the facts or matters stated in any resolution, certificate, statement, acknowledgement, consent, order or other document that is included in the Custodial Documents.

(i) Survival. The provisions of this Section 7.2 shall survive the resignation or removal of the Custodian and Paying Agent and the termination of this Agreement.

(j) Cooperation. The Company shall cooperate and use commercially reasonable efforts to provide any additional documentation or information reasonably requested by the Custodian in performing its duties and obligations hereunder.

## **ARTICLE VIII FEES AND EXPENSES**

Section 8.1 Fees and Expenses. The Bank shall charge such fees for its services and be reimbursed for such of its expenses under this Agreement as are set forth on Exhibit G, which

fees and expenses must be reasonable and customary. The Company shall pay such fees and expenses pursuant to the Priority of Payments. The provisions of this Section 8.1 shall survive any resignation or removal of the Bank as Custodian or Paying Agent or the termination or assignment of this Agreement.

## **ARTICLE IX REMOVAL OR RESIGNATION**

### **Section 9.1     Removal or Resignation of Custodian and Paying Agent.**

(a)     Resignation. Subject to the provisions of Section 9.1(c), the Bank may at any time resign and terminate its obligations as Custodian and Paying Agent under this Agreement upon at least sixty (60) days' prior written notice to the Company and the Secured Party. In the event the Bank resigns it must resign as both Custodian and Paying Agent. Promptly after receipt of notice of the Bank's resignation as Custodian and Paying Agent, subject to the provisions of the LLC Operating Agreement and the Reimbursement and Security Agreement as they relate to the Company, the Company shall appoint, by written instrument, a successor Custodian and Paying Agent. In the event that no successor shall have been appointed as Custodian and Paying Agent within such sixty (60) day period, the Bank may petition any court of competent jurisdiction to appoint a successor Custodian and Paying Agent.

(b)     Removal. Subject to the provisions of Section 9.1(c), the Company or the Secured Party may remove and discharge the Bank as Custodian and Paying Agent (or any successor custodian and paying agent thereafter appointed) without cause from the performance of its obligations under this Agreement upon at least thirty (30) days' prior written notice to the Bank. Promptly after the giving of notice of removal to the Bank as Custodian and Paying Agent, subject to the provisions of the LLC Operating Agreement and the Reimbursement and Security Agreement as they relate to the Company, the Company shall appoint, by written instrument, a successor Custodian and Paying Agent.

(c)     Effectiveness. Upon appointment of a successor Custodian and Paying Agent, the successor Custodian and Paying Agent shall execute, acknowledge and deliver an instrument accepting such appointment under, and agreeing to be bound by the terms of, this Agreement, at which time the resignation or removal of the predecessor Custodian and Paying Agent shall become effective and the successor Custodian and Paying Agent, without any further act, deed or conveyance, shall become fully vested with all rights, powers, duties and obligations of the Custodian and the Paying Agent under this Agreement, as if originally named Custodian and Paying Agent hereunder. One original counterpart of such instrument shall be delivered to each of the Company, the predecessor Custodian and Paying Agent and the successor Custodian and Paying Agent.

(d)     Transfer of Documents. In the event of any removal or resignation as Custodian and Paying Agent, the Bank shall promptly transfer to the successor custodian and Paying Agent, as directed, all Custodial Documents and funds deposited in the Accounts, and the Company and the Bank shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor custodian and

paying agent all rights, powers, duties and obligations of the Bank as Custodian and Paying Agent under this Agreement.

(e) Costs. The Company shall be responsible for payment to the successor Custodian and Paying Agent of all fees and expenses of the successor Custodian and Paying Agent and any fees and expenses for transferring Custodial Documents and funds deposited in the Accounts to the successor Custodian and Paying Agent.

## **ARTICLE X REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 10.1 Representations, Warranties and Covenants. The Bank as Custodian and Paying Agent and the Company, as applicable, represent and warrant to each other as follows:

(a) it has the requisite power and authority and the legal right to execute and deliver, and to perform its obligations under, this Agreement, and has taken all necessary corporate action to authorize its execution, delivery and performance of this Agreement;

(b) no consent or authorization of, filing with, or other act by or in respect of, any United States or non-United States national, federal, state, local or provincial or international government or any political subdivision of any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body, and no consent of any other Person (including any stockholder or creditor) is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement by it;

(c) this Agreement has been duly executed and delivered on behalf of it and constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether enforcement is sought in a proceeding in equity or at law); and

(d) the Bank (i) is a bank, trust company or title insurance company subject to supervision and examination by any federal or state regulatory authority, (ii) is experienced in providing services of the type required to be performed by the Bank as the Custodian and Paying Agent under this Agreement, (iii) is qualified and licensed to do business in each jurisdiction in which the Custodial Documents will be held to the extent required unless and to the extent the failure to be so qualified or licensed will not have a material adverse effect on the Custodian or its ability to perform its obligations hereunder, (iv) is not prohibited from exercising custodial powers in any jurisdiction in which the Custodial Documents are or will be held, (v) has combined capital and surplus of at least \$50,000,000 as reported in its most recent report of condition, (vi) has the facilities to safeguard the funds deposited in the Accounts, the Loan Documents and other Custodial Documents, (vii) is not an Affiliate of the Company or of any Servicer, and (viii) is acceptable to and approved by Initial Member (such approval not to be unreasonably withheld, delayed or conditioned).

Section 10.2 Insurance. At its own expense, the Custodian and Paying Agent shall maintain at all times and keep in full force and effect (a) fire and other casualty insurance, (b) fidelity insurance, (c) theft of documents insurance, (d) forgery insurance, and (e) errors and

omissions insurance. All such insurance shall be in amounts, with standard coverage and subject to deductibles, as are customary for insurance typically maintained by financial institutions which act as paying agent and as custodian of collateral substantially similar to the Custodial Documents. Upon written request, the Company shall be entitled to receive a certificate of the respective insurer that such insurance is in full force and effect.

## **ARTICLE XI REPORTS**

### **Section 11.1 Custodian and Paying Agent Report.**

(a) The Custodian and Paying Agent shall cause to be furnished to the Managing Member, the Receiver and the Secured Party, no later than 12:00 noon, New York City time, on each Distribution Date, a report for the applicable Due Period (the “**Custodian and Paying Agent Report**”) (i) with respect to the Loans and Collateral (including the Accounts setting forth in reasonable detail the balances of and any investments in such Accounts as of such date and all deposits to and disbursements, including of all Loan Proceeds, from such Accounts, including the date on which made, since the date of the previous report) held by the Custodian and Paying Agent pursuant to this Agreement, (ii) on the satisfaction of the Performance Tests, and (iii) containing such other information as is specified on Exhibit I. The Custodian and Paying Agent shall reconcile any discrepancies between the Distribution Date Report and the internal records of the Custodian and Paying Agent with respect to distributions from the Distribution Account and perform the calculations and reconciliations required to determine whether the Performance Tests are satisfied and to confirm the amounts distributable with respect to payments of principal and interest on any Purchase Money Note.

(b) The Custodian and Paying Agent Report shall be based solely on information included in (i) the Managing Member’s Monthly Report for the applicable Due Period and certified by an Authorized Representative of the Managing Member, (ii) the Distribution Date Report for the applicable Due Period, and (iii) the internal records of the Custodian and Paying Agent relating to distributions from the Distribution Account.

### **Section 11.2 Additional Reports.**

(a) Within two (2) Business Days after receipt of a written request of the Company or of the Secured Party for a Custodial Report or an updated Loan Schedule and Exception List, the Custodian and Paying Agent shall provide the requesting party with the Custodial Report or the updated Loan Schedule and Exception List, as applicable.

(b) The Custodian and Paying Agent shall provide any additional information or reports relating to the Accounts and the transactions therein reasonably requested from time to time by the Company or the Secured Party in the case of any Account.

**Section 11.3 Company and Servicer Distribution Date Accounting.** For each Due Period, the Company shall render or cause the Managing Member or Servicer to render to the Paying Agent an accounting determined as of the close of business on the applicable Determination Date and certified by an Authorized Representative of the Company (the “**Distribution Date Report**”). The Company shall provide the Distribution Date Report to the

Paying Agent (i) with respect to any Due Period prior to and including the Due Period in which the last Servicing Transfer Date occurs, on date that is two (2) Business Days prior to the applicable Distribution Date, and (ii) commencing with the Due Period immediately following the Due Period in which the last Servicing Transfer Date occurs and for any Due Period thereafter, on the fifteenth (15<sup>th</sup>) of each month after the applicable Determination Date, or if such day is not a Business Day, the next succeeding day that is a Business Day. The Distribution Date Report shall contain the following information:

(a) the aggregate amount of Loan Proceeds as of the close of business on such Determination Date, after giving effect to Loan Proceeds received with respect to the applicable Due Period;

(b) the amount of Principal Proceeds and the amount of Interest Proceeds received during the applicable Due Period; and

(c) for the Collection Account:

(i) the amount to be transferred from the Collection Account to the Distribution Account which shall equal the sum of: (x) all Loan Proceeds received for the applicable Due Period *less* (y) the total amount of funds withdrawn from the Collection Account as permitted pursuant to Section 3.1 for the applicable Due Period; and

(ii) the amounts payable from the Collection Account (through a transfer to the Distribution Account) pursuant to the Priority of Payments, specifically including:

1. The amount of Working Capital Advances payable to the Managing Member, and if a predecessor Managing Member has been removed as the Managing Member pursuant to Section 3.2 of the LLC Operating Agreement, the amount of Working Capital Advances payable to such predecessor Managing Member,
2. (a) For any Due Period prior to and including October 31, 2009, the amount of Management Fee payable to the Initial Member, and (b) for the Due Period commencing on November 1, 2009 and all subsequent Due Periods, the amount of Management Fee payable to the Managing Member, and if a predecessor Managing Member has been removed as the Managing Member pursuant to Section 3.2 of the LLC Operating Agreement, the amount of Management Fee payable to such predecessor Managing Member,
3. The amount of the Purchase Money Note Guaranty Fee and any accrued interest thereon payable to the Purchase Money Note Guarantor,



4. The reimbursement amounts and any accrued interest thereon payable to the Purchase Money Note Guarantor for previous payments made by it under the Purchase Money Note Guaranty,
5. The amount of accrued and unpaid interest payable on the Purchase Money Note,
6. The amount of Interest Proceeds to be deposited in the Liquidity Reserve Account,
7. The amount of Interest Proceeds payable as distributions to the Initial Member and to the Private Owner,
8. Whether each of the Performance Tests have been satisfied, and the amount of Principal Proceeds payable as principal on the Purchase Money Note,
9. The amount of Principal Proceeds to be deposited in the Liquidity Reserve Account, and
10. The amount of Principal Proceeds payable as distributions to the Initial Member and to the Private Owner.

Section 11.4 Distribution Date Instructions. Each Distribution Date Report shall contain instructions to the Paying Agent to withdraw on the related Distribution Date from the Distribution Account and pay or transfer the amounts set forth in such report in the manner specified, and in accordance with the priorities established, in Section 5.1 of this Agreement.

Section 11.5 Books and Records. The Paying Agent shall maintain all such accounts, books and records as may be necessary to properly record all transactions carried out by it with respect to the Accounts, including the disbursement of all Loan Proceeds. The Paying Agent shall also maintain a complete and accurate set of files, books and records regarding the Loans and the Collateral. This obligation to maintain a complete and accurate set of records shall encompass all files in the Custodian and Paying Agent's custody, possession or control pertaining to the Loans and the Collateral, including all Custodial Documents. The Paying Agent shall permit the Company and the Secured Party to examine such accounts, books and records that relate to any Account, provided that any such examination shall occur upon reasonable prior notice and during normal business hours.

## **ARTICLE XII**

### **NO ADVERSE INTERESTS**

Section 12.1 No Adverse Interests. By execution of this Agreement, the Bank represents and warrants that it currently holds, and during the term of this Agreement shall hold, no adverse interest, by way of security or otherwise, in any Loan or any REO Property, and hereby waives and releases any such interest which it may have in any Loan or REO Property as of the date hereof. The Loans and the REO Property shall not be subject to any security interest,

lien or right to set-off by the Bank or any third party claiming through the Bank, and the Bank shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, any of the Loans or REO Property.

### **ARTICLE XIII LIABILITY AND INDEMNIFICATION**

#### **Section 13.1 Liability; Indemnification.**

(a) The Company shall indemnify and hold harmless the Custodian and Paying Agent and the directors, officers, agents and employees of the Custodian and Paying Agent against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorney's fees and litigation costs, that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of this Agreement or any action taken or not taken by it or them hereunder unless such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements were imposed on, incurred by or asserted against the Custodian and Paying Agent because of the breach by the Custodian and Paying Agent of its obligations hereunder, which breach was caused by negligence, lack of good faith or willful misconduct on the part of the Custodian and Paying Agent or any of directors, officers, agents or employees of the Custodian and Paying Agent. The foregoing indemnification shall survive any resignation or removal of the Custodian and Paying Agent or the termination or assignment of this Agreement.

(b) In the event that, the Custodian fails to produce a Custodial Document that was not identified as an Exception in the then controlling Loan Schedule and Exception List within two (2) Business Days after required or requested by the Company, and such Custodial Document is not outstanding pursuant to a Request for Release and Receipt in the form attached as Exhibit D (a "**Custodial Delivery Failure**"), then (i) with respect to any missing Note with respect to which a Custodial Delivery Failure has occurred and has continued in excess of three (3) Business Days, the Custodian shall promptly deliver to the Company upon request, a Lost Instrument Affidavit in the form attached as Exhibit E (unless the original Note shall have been delivered prior to such time) and (ii) with respect to any missing document related to such Loan, including a missing Note, (1) the Custodian shall indemnify the Company and the Secured Party in accordance with Section 13.1(c) and, (2) at the Company's option, at any time the long term obligations of the Custodian are rated below the second highest rating category of Moody's Investors Service, Inc. or Standard and Poor's Ratings Group, a division of McGraw-Hill, Inc., the Custodian shall obtain and maintain an insurance bond naming the Company and the Secured Party, and their successors in interest and assigns as loss payees, insuring against any losses associated with the loss of such document, in an amount equal to the then outstanding principal balance of the related Loan or such lesser amount requested by the Company in the Company's sole discretion.

(c) The Custodian and Paying Agent hereby indemnifies and holds harmless the Company, the Secured Party and their respective directors, officers, employees, agents and designees, against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including

reasonable attorney's fees and litigation costs, that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of a Custodial Delivery Failure or the Custodian and Paying Agent's negligence, lack of good faith or willful misconduct or any breach of any of the conditions, representations, warranties or obligations of the Custodian and Paying Agent contained herein; provided that in no event shall the Custodian and Paying Agent or any of directors, officers, agents or employees of the Custodian and Paying Agent have any liability with respect to any special, indirect, punitive or consequential damages suffered by the Company. The foregoing indemnification shall survive any termination or assignment of this Agreement.

## **ARTICLE XIV CUSTODIAN AND PAYING AGENT**

### **Section 14.1 Reliance of Custodian and Paying Agent.**

(a) Documents; Communications. The Custodian and Paying Agent may rely conclusively on any request, instruction, certificate, direction, receipt, demand, consent, resolution, statement, instrument, opinion, report, notice or other document or communication furnished to the Custodian and Paying Agent hereunder or under any Loan Document that the Custodian and Paying Agent believes in good faith (i) to have been signed or presented by an Authorized Representative and (ii) conforms in form to the requirements of this Agreement; provided, however, that in the case of any request, instruction, certificate, direction, receipt, demand, consent, resolution, statement, instrument, opinion, report, notice or other document or communication which by any provision hereof is specifically required to be furnished to the Custodian and Paying Agent, the Custodian and Paying Agent shall be under a duty to examine the same in accordance with the requirements of this Agreement and any Loan Document.

(b) Requested Instructions. Subject to the provisions of Section 7.2(d), in which case the Custodian and Paying Agent shall take instructions only from the Secured Party, if the Custodian and Paying Agent requests instructions from the Company with respect to any act, action or failure to act in connection with this Agreement, the Custodian and Paying Agent shall be entitled (without incurring any liability therefor to the Company, the Secured Party or any other Person) to refrain from taking such action and continue to refrain from acting unless and until the Custodian and Paying Agent shall have received written instructions from the Company (or the Secured Party, as the case may be).

(c) Certificates. Whenever the Custodian and Paying Agent shall deem it necessary or desirable that a matter be proved or established in connection with taking or omitting any action by it hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Custodian and Paying Agent, be deemed to be conclusively proved or established by a certificate of an Authorized Representative of the relevant Party delivered to the Custodian and Paying Agent.

(d) Reliance on Experts. The Custodian and Paying Agent may consult with and obtain advice from reputable and experienced outside counsel, certified public accountants which are nationally recognized, or other experts and the advice or any opinion of such counsel,

accountants or other experts shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel, accountants or other experts.

(e) Limited Risk. None of the provisions of this Agreement shall require the Custodian and Paying Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(f) Merger or Consolidation. Any corporation into which the Custodian and Paying Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Custodian and the Paying Agent shall be a party, or any corporation succeeding to the business of the Custodian and Paying Agent, except for any such Person who is or, upon consummation of such transaction, will be an Affiliate of the Company or any Servicer, shall be the successor of the Custodian and Paying Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding; provided that any such successor shall satisfy the representations, warranties and covenants set forth in Section 10.1 of this Agreement. The Custodian and Paying Agent or successor Custodian and Paying Agent shall provide the Company with written notice prior to or within ten (10) days after the consummation of any such transaction. At no time shall an Affiliate of the Company or any Servicer be the Custodian and Paying Agent under this Agreement.

## ARTICLE XV TAXES

Section 15.1 Tax Reports. The Custodian and Paying Agent shall not be responsible for the preparation or filing of any reports or returns relating to federal, state or local income taxes with respect to this Agreement, other than in respect of the Custodian and Paying Agent's compensation or for reimbursement of expenses.

Section 15.2 Stamp and Other Similar Taxes. The Company agrees to indemnify and hold harmless the Custodian and Paying Agent from, and shall reimburse the Custodian and Paying Agent for, any present or future claim for liability for any stamp or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with this Agreement. The obligations of the Company under this Section 15.2 shall survive the termination of the other provisions of this Agreement.

## ARTICLE XVI TERM

Section 16.1 Term. This Agreement shall terminate upon (a) the first to occur of (i) the final payment or other liquidation of all of the Loans and (ii) disposition of all Collateral (including any REO Property), and (b) the release and delivery to the Company of all Custodial

Documents held by or in the possession of the Custodian in accordance with the terms of this Agreement. Notwithstanding anything to the contrary herein, this Agreement may be terminated without cause upon at least thirty (30) days' prior written notice to the Custodian and Paying Agent, by either the Company or the Secured Party.

## **ARTICLE XVII AUTHORIZED REPRESENTATIVES**

Section 17.1 Authorized Representatives. Each individual designated as an Authorized Representative of any Person is authorized to give and receive notices, requests and instructions and to deliver certificates and documents in connection with this Agreement on behalf of such Person, and the specimen signature for each such Authorized Representative, initially authorized hereunder, is set forth on Exhibit F. From time to time, any Person may, by delivering to the other parties hereto a revised copy of Exhibit F, change such Person's Authorized Representative (and amend this Agreement to so provide), but until a new Exhibit F with the information regarding the successor Authorized Representative is delivered to a party in accordance with this Agreement, that party shall be entitled to rely conclusively on the Exhibit F last delivered hereunder.

## **ARTICLE XVIII NOTICES**

Section 18.1 Notices. All demands, notices or other communications required or permitted to be given or delivered by any party hereto or the Secured Party under or by reason of the provisions of this Agreement shall be in writing and shall be given by registered or certified mail (postage prepaid) or delivered by hand or by a nationally recognized air courier service, directed to the address of each party set forth below:

### **If to the Bank:**

Citibank, N.A.  
Agency & Trust  
388 Greenwich Street, 14<sup>th</sup> Floor  
New York, NY 10013  
Attention: Cirino Emanuele  
Tel: (212) 816-5614

### **If to the Company:**

Franklin Venture, LLC  
4282 North Freeway  
Fort Worth, Texas 76137  
Attention: Dennis G. Stowe  
Tel: (817) 321-6001

with a copy to:

K&L Gates LLP

1601 K Street, N.W.  
Washington, DC 20006  
Attention: Phillip J. Kardis, II  
Tel: (202) 778-9401

**If to the Secured Party:**

Director, Division of Finance  
c/o Federal Deposit Insurance Corporation  
3501 Fairfax Drive (Room VS-4088)  
Arlington, VA 22226  
Attention: Bret D. Edwards  
Tel: (703) 562-6101

with a copy to:

Senior Counsel  
FDIC Legal Division  
Litigation and Resolutions Branch, Receivership Section  
Special Issues Unit  
3501 Fairfax Drive (Room E-7056)  
Arlington, VA 22226  
Attention: David Gearin  
Tel: (703) 562-2430

Any such notice shall become effective when received (or receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified above.

**ARTICLE XIX  
MISCELLANEOUS**

Section 19.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to any rules of conflicts of laws that might refer the governance or construction of this Agreement to the law of any other jurisdiction.

Section 19.2 Jurisdiction; Venue and Service. Each of the Company and the Bank, hereby irrevocably and unconditionally:

(a) (i) agrees that any suit, action or proceeding instituted against it by any other party with respect to this Agreement may be instituted, and that any suit, action or proceeding by it against any other party with respect to this Agreement shall be instituted, only in the Supreme Court of the State of New York, County of New York, or the U.S. District Court for the Southern District of New York or the United States District Court for the District of Columbia (and

appellate courts from any of the foregoing) as the party instituting such suit, action or proceeding may in his or its sole discretion elect, (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by any other party and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law;

(b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 19.2(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Company or the Bank, as applicable, at its address for notices pursuant to Article VIII (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 19.2 shall affect the ability of the Company or the Bank to be served process in any other manner permitted by Law;

(c) (i) waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in Section 19.2(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (iii) agrees not to plead or claim either of the foregoing; and

(d) agrees that nothing contained in this Section 19.2 shall be construed to constitute consent to jurisdiction by the Initial Member, the Failed Bank, the Receiver or the FDIC in any capacity or a limitation on any removal rights the FDIC, in any capacity, may have.

**Section 19.3 Waiver of Jury Trial. EACH OF THE COMPANY AND THE BANK AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.**

**Section 19.4 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

**Section 19.5 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the

case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 19.4 is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 19.1.

Section 19.6 Compliance With Law. Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all applicable laws, as they may pertain to such party's performance of its obligations hereunder.

Section 19.7 Entire Agreement. This Agreement contains the entire agreement between the Company and the Custodian and Paying Agent with respect to the subject matter hereof and supersedes any and all other prior agreements, whether oral or written.

Section 19.8 Assignment; Binding Effect. Except as is permitted pursuant to the provisions of this Agreement providing for successor Custodians and Paying Agents, the Custodian and Paying Agent shall not assign or delegate this Agreement or any of its rights or obligations hereunder without the prior written consent of the Company and any such purported assignment or delegation without such consent shall be void *ab initio*. This Agreement shall be binding on and inure to the benefit of the parties hereto, and inure to the benefit of the Secured Party as third party beneficiary hereunder, and in each case their respective successors and permitted assigns, and no other Person or Persons shall have any rights or remedies under or by reason of this Agreement.

Section 19.9 Rights Cumulative. The rights, powers and remedies of the Custodian and Paying Agent and the Company under this Agreement shall be in addition to all rights, powers and remedies given to the Custodian and Paying Agent and the Company by virtue of any statute or rule of law, or any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently.

Section 19.10 Amendments. Subject to the requirements of the LLC Operating Agreement as they relate to the Company, this Agreement may be amended from time to time by written agreement signed by the Company and the Custodian and Paying Agent; provided that the parties obtain the Secured Party's prior written consent to any such amendment.



Section 19.11 Headings. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All section and paragraph references contained herein shall refer to sections and paragraphs in this Agreement unless otherwise specified.

IN WITNESS WHEREOF, the Bank and the Company have each caused this Agreement to be executed as of the date first written above.

**CITIBANK, N.A.**

By:   
Name: **John Hannon**  
Title: **Vice President**

**FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FRANKLIN VENTURE, LLC**

By: **RCS Franklin Venture LLC, its Managing Member**

By: **Residential Credit Solutions, Inc., its sole Member**

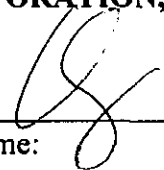
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Bank and the Company have each caused this Agreement to be executed as of the date first written above.

**CITIBANK, N.A.**

By: \_\_\_\_\_  
Name:  
Title:

**FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate capacity**

By:  \_\_\_\_\_  
Name:  
Title:

**FRANKLIN VENTURE, LLC**

By: RCS Franklin Venture LLC, its Managing  
Member

By: Residential Credit Solutions, Inc., its  
sole Member

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Bank and the Company have each caused this Agreement to be executed as of the date first written above.

**CITIBANK, N.A.**

By: \_\_\_\_\_  
Name:  
Title:


**FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate capacity**

By: \_\_\_\_\_  
Name:  
Title:

**FRANKLIN VENTURE, LLC**

By: RCS Franklin Venture LLC, its Managing  
Member

By: Residential Credit Solutions, Inc., its  
sole Member

By:  \_\_\_\_\_  
Name:  
Title:



**EXHIBIT A**

**LOAN SCHEDULE**

The Loan Schedule is separately being certified and delivered on the Closing Date by the Company.



**EXHIBIT B**

**FORM OF COLLATERAL CERTIFICATE**

\_\_\_\_\_, 2\_\_\_\_

[\_\_\_\_\_] , LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Custodial and Paying Agency Agreement, dated September 30, 2009, by and between Franklin Venture, LLC, as the Company, and Citibank, N.A., as the Custodian  
**("Custodial and Paying Agency Agreement")**

Ladies and Gentlemen:

In accordance with the provisions of Section 6.1(b) of the Custodial and Paying Agency Agreement, the undersigned, as Custodian, hereby certifies that other than the Exceptions listed as part of the Loan Schedule and Exceptions List attached hereto (a) (i) it has received all of the Custodial Documents required to be delivered with respect to each Loan and REO Property identified on the Loan Schedule and Exceptions List attached hereto, and (ii) the Custodial Documents for each such Loan are as listed on such Loan Schedule and Exceptions List, (b) all documents have been reviewed and examined by the Custodian in accordance with the Review Procedures, and (c) based upon its examination of the Custodial Documents, such documents appear (i) regular on their face (*i.e.*, are not mutilated, damaged, torn, defaced or otherwise physically altered); (ii) to relate to the Loans or REO Property with respect to which they purport to relate; (iii) to have been executed by the named parties; (iv) to be what they purport to be; and (v) where applicable, to be recorded.

The Custodian makes no representations in or by this Certificate and/or the Custodial and Paying Agency Agreement as to: (i) the validity, legality, enforceability or genuineness of any of the Custodial Documents or any of the Loans or REO Property, or (ii) the collectibility, insurability, effectiveness or suitability of any of the Loans or REO Property.

Initially capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Custodial and Paying Agency Agreement.



In confirmation of your acknowledgement of the foregoing, please sign this certificate in the place provided below and return an executed copy to us.

**CITIBANK, N.A.**

By: \_\_\_\_\_

Name:

Title:

Acknowledged:

**FRANKLIN VENTURE, LLC**

By: RCS Franklin Venture LLC, its  
Managing Member

By: Residential Credit Solutions, Inc., its sole  
Member

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT C**

**FORM OF SUPPLEMENTAL DELIVERY CERTIFICATE**

\_\_\_\_\_, 2\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Custodial and Paying Agency Agreement, dated September 30, 2009, by and between Franklin Venture, LLC, as the Company, and Citibank, N.A., as the Custodian  
**("Custodial and Paying Agency Agreement")**

Ladies and Gentlemen:

In accordance with the provisions of Section 6.1(d) of the Custodial and Paying Agency Agreement, the Company, hereby certifies that: (i) attached is a list of additional Custodial Documents relating to the Loans, identifying with respect to each such Custodial Document the related Loan or, as the case may be, relating to any newly acquired REO Property, and (ii) enclosed with this certificate are the Custodial Documents listed on the attached.

Initially capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Custodial and Paying Agency Agreement.

In confirmation of your acknowledgement of the foregoing, please sign this certificate in the place provided below and return an executed copy to us.

Franklin Venture, LLC, as the Company

By: RCS Franklin Venture LLC, its  
Managing Member

By: Residential Credit Solutions, Inc., its sole  
Member

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged:

Citibank, N.A., as the Custodian

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT D**

**REQUEST FOR RELEASE AND RECEIPT**

To: \_\_\_\_\_

Re: Custodial and Paying Agency Agreement dated September 30, 2009, by and between Franklin Venture, LLC, as the Company, and Citibank, N.A., as Custodian ("**Custodial and Paying Agency Agreement**")

In connection with the administration of the Custodial Documents held by you as the Custodian pursuant to the Custodial and Paying Agency Agreement, we request the release, and acknowledge and certify receipt of, the Custodial Documents for the Loan(s) and/or REO Property described on Schedule A hereto for the reason indicated below.

**Reason for Requesting Documents** (check one)

- \_\_\_\_\_ 1.      Loan to be paid in full or received or discounted pay-off accepted or to be accepted as payment in full.
- \_\_\_\_\_ 2.      Loan to be foreclosed on, or to be modified or restructured, or deed to be accepted in lieu thereof or required pursuant to court order or other reason related to litigation, as permitted under the Custodial and Paying Agency Agreement.
- \_\_\_\_\_ 3.      Loan or REO Property agreed to be sold.

If some or all of the Custodial Documents for a specified Loan have been previously released to us, please release to us any additional Custodial Documents in your possession relating to that Loan. If item 2 is checked, upon our return, as appropriate, of the Custodial Documents to you as Custodian, please acknowledge your receipt by signing in the space indicated below, and returning this form.

Franklin Venture, LLC, as the Company

By: RCS Franklin Venture LLC, its  
Managing Member

By: Residential Credit Solutions, Inc., its sole  
Member

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged:

---

By: \_\_\_\_\_

Name:

Title:





## **EXHIBIT E**

### **FORM OF LOST INSTRUMENT AFFIDAVIT**

*(Note to Preparer: When preparing the actual Affidavit delete this instruction and the reference to Exhibit E and the language "Form of Lost Instrument Affidavit" above.)*

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

### **LOST INSTRUMENT AFFIDAVIT**

**(Franklin Bank, S.S.B. Sale)**

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who upon being duly cautioned and sworn deposes and says and represents and warrants, to the best of his /her knowledge, as follows:

1. That s/he is the \_\_\_\_\_ for \_\_\_\_\_, \_\_\_\_\_, whose address is \_\_\_\_\_, \_\_\_\_\_ (the "**Custodian**").

2. The Custodian is the document custodian for Franklin Venture, LLC (the "**Company**") and, as such, was in possession of certain documents with respect to that certain loan, obligation or interest in a loan or obligation evidenced by a promissory note, evidencing an indebtedness or evidencing rights in an indebtedness (the "**Instrument**"), as follows:

Loan Number: \_\_\_\_\_

Name of Maker: \_\_\_\_\_

Original Principal Balance: \_\_\_\_\_

Date of Instrument: \_\_\_\_\_

3. That the original Instrument has been lost or misplaced. The Instrument was not where it was assumed to be, and a diligent search to locate the Instrument was undertaken, without results.

4. That if the Custodian subsequently locates the Instrument, the Custodian shall use reasonable efforts to provide written notice to the Company and deliver the Instrument to the Company in accordance with written instructions received from the Company (or such other party designated in writing by the Company).

5. That the purpose of this affidavit is to establish such facts. This affidavit shall not confer any rights or benefits, causes or claims, representations or warranties (including,

without limitation, regarding ownership or title to the Instrument or the obligations evidenced thereby) upon the Company, its successors or assigns.

6. That the Custodian hereby indemnifies and holds harmless the Company and its Affiliates and their respective successors, assigns, directors, officers, employees, contractors and agents (the "**Indemnified Parties**") from and against any and all claims (including any claim by any individual or entity for the collection of any sums due under or with respect to the Instrument), liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnified Parties and arising out of or resulting from (i) the Custodian's inability to find the Instrument and deliver it to the Company, or (ii) any inaccuracy or misstatement of fact, or a breach of any representation, warranty or agreement or duty contained, in this affidavit.

7. This affidavit shall be governed by and construed in accordance with the laws of the State of New York without reference to any rules of conflicts of laws that might refer the governance or construction of this affidavit to the law of any other jurisdiction.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

Given under my hand and seal of office on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission expires: \_\_\_\_\_




**EXHIBIT F**


**AUTHORIZED REPRESENTATIVES**

1. Authorized Representatives of the Company:

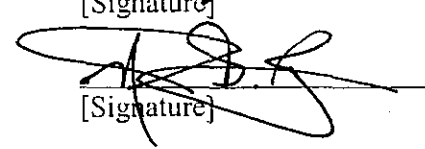
Dennis Stowe

  
[Signature]

Kelly O'Bannon

  
[Signature]

Mark Rogers

  
[Signature]

2. Authorized Representative of the Custodian and Paying Agent:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

3. Authorized Representative of Secured Party

Timothy A. Kruse

\_\_\_\_\_  
[Signature]

Herbert J. Held

\_\_\_\_\_  
[Signature]

William P. Stewart

\_\_\_\_\_  
[Signature]

**EXHIBIT F**

**AUTHORIZED REPRESENTATIVES**

1. Authorized Representatives of the Company:

Dennis Stowe

\_\_\_\_\_  
[Signature]

Kelly O'Bannon

\_\_\_\_\_  
[Signature]

Mark Rogers

\_\_\_\_\_  
[Signature]

2. Authorized Representative of the Custodian and Paying Agent:

**John Hannon**  
**Vice President**

\_\_\_\_\_  
[Signature]

**KAREN SCHLUTER**  
Vice President

\_\_\_\_\_  
[Signature]

**JENNIFER McCOURT**  
Vice President

\_\_\_\_\_  
[Signature]

3. Authorized Representative of Secured Party

Timothy A. Kruse

\_\_\_\_\_  
[Signature]

Herbert J. Held

\_\_\_\_\_  
[Signature]

William P. Stewart

\_\_\_\_\_  
[Signature]

**EXHIBIT F**

**AUTHORIZED REPRESENTATIVES**

1. Authorized Representatives of the Company:

Dennis Stowe

[Signature]

Kelly O'Bannon

[Signature]

Mark Rogers

[Signature]

2. Authorized Representative of the Custodian and Paying Agent:

\_\_\_\_\_

[Signature]

\_\_\_\_\_

[Signature]

\_\_\_\_\_

[Signature]

3. Authorized Representative of Secured Party

Timothy A. Kruse

[Signature]

Herbert J. Held

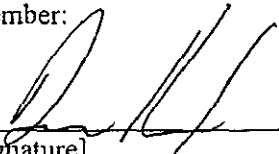
[Signature]

William P. Stewart

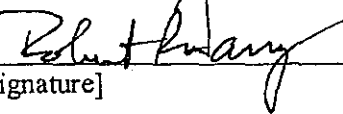
[Signature]

4. Authorized Representatives of the Managing Member:

Darren Hadlock

  
[Signature]

Robert Harry

  
[Signature]

\_\_\_\_\_

\_\_\_\_\_  
[Signature]





**EXHIBIT G**

**FEES AND EXPENSES OF CUSTODIAN AND PAYING AGENT**

[To be attached]



**SCHEDULE OF FEES FOR SERVICES AS  
CUSTODIAN AND PAYING AGENT  
FOR  
FRANKLIN VENTURE, LLC**

**\$1.3B LOAN PORTFOLIO OF THE FDIC AND RCS**

**September 25, 2009**

**On-Time Acceptance Fee:**

To cover the acceptance of the Custodian and Paying Agent appointment, the study and consideration of the Agreement and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group.

**Waived**

**Paying Agent Annual Administration Fees:**

To cover the administrative functions of the Paying Agent under the Agreement, including the establishment and maintenance of the accounts and activation, investment of the funds, maintenance of the records, follow-up of the agreement provisions, disbursements, monthly calculation of interest due on the Purchase Money Note, and any other duties required of the Paying Agent under the terms of the agreement. The Annual Administration Fees are paid annually in advance.

**\$6,000            (1 Day Float)**

**Custody Fees:**

To cover the administrative functions of the Custodian under the Custodial and Paying Agent Agreement, including the review, release and safekeeping of the collateral files, trailing documents, certifications and reporting, establishment and maintenance of the Custody accounts and activation, maintenance of the records, follow-up of the agreement provisions, and any other duties required of the Custodian under the terms of the agreement. This fee is payable monthly in arrears through the waterfall.

**Initial File Review Fee:                    \$3.25 per file**

**Annual Fee:                                    \$3.50 per file (1/12 will be billed per file, per month)**

**File Release Fee:                            \$2.00 per file**



**Legal Fee:**

To cover review of legal documents by Citibank's outside counsel on behalf of Citibank.


**Waived**

**Schedule Assumptions:**

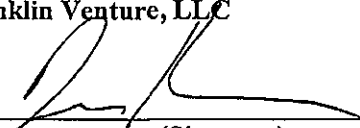
- Subject to internal approval and satisfactory review of the documentation.
- Citibank, N.A. will hold all necessary trust accounts and receive daily collections from the Servicer.
- Daily collected funds will be invested in an Institutional Money Market fund selected by Franklin Venture, LLC, from a list of providers we will supply. As a result, Citibank will receive Shareholder Servicing fees.
- Servicer will provide monthly report to Citibank, N.A. at least two business days prior to Payment Date.
- Citibank N.A. will provide monthly calculation of interest due on the Purchase Money Note
- Documentation to be governed by New York law.

This fee schedule is offered for the program cited within and discloses all fees or charges earned by Citibank Agency and Trust. The above schedule of fees does not include charges for out-of-pocket expenses or for any services of an extraordinary nature that we may be called upon from time to time to perform in either an agency or fiduciary capacity, nor does it include the fees of our legal counsel. Fees are also subject to satisfactory review of the documentation, and we reserve the right to modify them should the characteristics of the transaction change. Our participation in this program is subject to internal approval of the third party depositing monies into the escrow account. The acceptance fee is payable upon execution of this document. Should this schedule of fees be accepted and agreed upon and work commenced on this program but subsequently halted and the program is not brought to market, the Acceptance Fee and legal fees incurred, if any, will still be payable in full. This Fee Schedule is offered for, and applicable to the program cited on page one only, and is guaranteed for sixty days from the date on this proposal. After sixty days, this offer can be extended in writing only. To help the US government fight terrorism and money laundering, Federal law requires us to obtain, verify and record information that identifies each business or entity that opens an account or establishes a relationship. What this means for you: when you open an account or establish a relationship, we will ask for your business name, a street address and a tax identification number, that Federal law requires us to obtain. We appreciate your cooperation.

**Citi Agency & Trust**

  
\_\_\_\_\_  
Brian Lord  
Vice President

Agreed and Accepted:  
**Franklin Venture, LLC**

  
\_\_\_\_\_  
(Signature)

Paeren Harold  
\_\_\_\_\_  
(Print Name)

Vice President  
\_\_\_\_\_  
(Title)

9/28/09  
\_\_\_\_\_  
(Date)



## **EXHIBIT H**

### **REVIEW PROCEDURES**

1. The Note and Mortgage each appear to bear an original signature or signatures purporting to be the signature or signatures of the Person or Persons named as the maker and Borrower, or in the case of copies of the Mortgage, that such copies bear a reproduction of such signature.
2. The amount of the Note is the same as the amount specified on the related Mortgage and Loan Schedule.
3. The original mortgagee is the same as the payee on the Note.
4. The Mortgage contains a legal description other than address, city and state; provided that Custodian shall have no responsibility for the accuracy, validity or completeness of such legal description.
5. The notary section (acknowledgment) is present and attached to the related Mortgage and is signed.
6. None of the original Note, the copy of the Mortgage, or the original Mortgage Assignment, contain any notations on their face which appear in the good faith judgment of Custodian to evidence any claims, liens, security interests, encumbrances or restrictions on transfer or any other alterations which appear irregular on their face, or if altered, such alterations have the initials of the person(s) named as the Borrower.
7. The Note is endorsed in blank by the original payor or the last endorsee.
8. Each original Mortgage Assignment in blank and any intervening assignment of mortgage, if applicable, appears to bear the original signature of the named mortgagee or beneficiary including any subsequent assignors, as applicable, or in the case of copies with respect to intervening Mortgage Assignments, that such copies appear to bear a reproduction of such signature or signatures, and the intervening Mortgage Assignments evidence a complete chain of assignment and transfer of the related Mortgage from the originating Person to the Company or in the case of a MERS Designated Loan to MERS®. The Custodian shall have no obligation to determine whether the certifications referenced in the foregoing sentence are authorized or issued by any particular person or officer or by a person who is in fact an Authorized Representative or is otherwise authentic.
9. The date of each intervening Mortgage Assignment is on or after the date of the related Mortgage and/or the immediately preceding assignment, as the case may be.
10. The notary section (acknowledgment) is present and attached to each intervening assignment and is signed.

11. Based upon a review of the Note, the Loan number, the Mortgagor's name, the address of the Mortgaged Property, the original amount of the Note, the original mortgage interest rate, the date of the Note, the first payment date and the maturity date and any other fields as mutually agreed upon as set forth in the Loan Schedule are correct.

12. Each MERS Designated Loan has been issued a MERS® identification number.

13. The REO Deed appears to bear an original signature or signatures purporting to be the signature or signatures of the Person or Persons named as grantor, or in the case of copies of the REO Deed, that such copies bear a reproduction of such signature.

14. The REO Deed contains a legal description other than address, city and state and has evidence of recording thereon provided that the Custodian shall have no responsibility for the accuracy or completeness of such legal description.

15. Each document has been executed by the named parties herein.

16. The Mortgage, REO Deed and Mortgage Assignments have evidence of recording.





## **EXHIBIT I**

### **CUSTODIAN AND PAYING AGENT REPORT**

#### **DISTRIBUTION REPORT**

Net Funds Available from Collection Account  
Current period Working Capital Advance  
TOTAL FUNDS FOR DISTRIBUTION

#### **Distributions:**

To Custodian and Paying Agent:  
Custodian and Paying Agent Fee

To Noteholder:  
Principal  
Interest  
Total to Noteholder

To Note Guarantor:  
Note Guaranty Fee  
Reimbursement due  
Total to Note Guarantor

Transfer to Liquidity Reserve

To Managing Member:  
Prior month cumulative Working Capital Advances  
Management Fee  
Distribution on Equity  
Total to Managing Member

To Initial Member:  
Distribution on Equity

To predecessor Managing Member (if applicable):  
Prior month cumulative Working Capital Advances  
Management Fee  
Total to predecessor Managing Member

TOTAL DISTRIBUTIONS

#### **NOTE ROLLFORWARD**

Note balance, previous Distribution Date  
Current period principal payment  
Note balance, current Distribution Date